

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Plaintiff in Error,

vs.

SYLVIA A. BRAINARD,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Northern District of California,  
Second Division.

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Filed

JUL 19 1915

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Complaint.]

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

The plaintiff for cause of action against the defendant above named alleges as follows:

I.

The defendant is a corporation.

II.

On the 29th day of May, 1914, in the City of Oakland, County of Alameda, State of California, the defendant had under its control and management and was using in and about the regular course of its business a certain delivery wagon and a team of two horses by which said delivery wagon was drawn. On said 29th day of May, 1914, the defendant had in its employ a certain unskillful, incompetent, and careless servant named Harry Crow, who was employed by the defendant as a driver, and who on said 29th day of May, 1914, in and about the business of the defendant, and within the scope of his said employment, was engaged in driving said horses.

III.

On said 29th day of May, 1914, while said horses and said delivery wagon were under the control and management of the defendant, said Harry Crow so



unskillfully, carelessly and negligently conducted himself in and about the driving and management of said horses, which were then and there harnessed to said delivery wagon, that said horses by reason of the unskillfulness, carelessness, and negligence of said Harry Crow took fright, [1\*] escaped from his control, and ran away, drawing after them said delivery wagon.

#### IV.

The plaintiff immediately after said horses escaped from the control of said Harry Crow as aforesaid was lawfully and in the exercise of due care on the sidewalk at the northwesterly corner of the intersection of Twentieth Street and Broadway in said City of Oakland. By reason of said negligence of the defendant the plaintiff while on said sidewalk and without any fault on her part was violently struck by said runaway horses, and was thrown down, kicked and trampled on by them, and thereby she sustained a compound comminuted fracture of her left thigh, the knee joint of her left leg was crushed, her right leg was cut and bruised, and she sustained various other injuries, and was made sick, sore, bruised and lame. The plaintiff, by reason of said negligence of the defendant and by reason of being struck, thrown down, kicked and trampled on, as aforesaid, has been ever since said 29th day of May, 1914, and still is, sick, sore, bruised and lame, and is and will be permanently lame. By reason of said injuries sustained by the plaintiff her left knee is and will be permanently stiff, and her left leg is

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\*Page-number appearing at foot of page of original certified Transcript of Record.

and will be permanently shorter than her right leg.

By reason of said negligence of the defendant the plaintiff has been damaged in the sum of twenty-five thousand dollars (\$25,000).

WHEREFORE, the plaintiff prays judgment against the defendant for the sum of twenty-five thousand dollars (\$25,000), and for costs of this action.

HARRISON & HARRISON,  
BYRON F. STONE,

Attorneys for Plaintiff. [2]

State of California,  
City and County of San Francisco.

Byron F. Stone, Jr., having been first duly sworn says on oath: I am one of the attorneys for the plaintiff named in the foregoing complaint. I have my office in the City and County of San Francisco, State of California. The said plaintiff is absent from the said city and county. I have read the foregoing complaint, and know the contents thereof. The same is true of my own knowledge except as to the matters therein stated on information and belief, and as to those matters I believe it to be true.

BYRON F. STONE.

Subscribed and sworn to before me this 29th day of August, 1914.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of  
San Francisco, State of California.

Assigned to Department No. 5, Aug. 31, 1914.

GEO. A. STURTEVANT,

Presiding Judge.

[Endorsed]: Filed Aug. 29, 1914. H. I. Mulcrevy, Clerk. By H. I. Porter, Deputy Clerk. [3]

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*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

**Summons.**

Action brought in the Superior Court of the State of California in and for the City and County of San Francisco, and the complaint filed in the office of the County Clerk of said City and County.

BYRON F. STONE, Jr., and  
RICHARD C. HARRISON,  
Attorneys for Plaintiff.

The People of the State of California Send Greeting to The San Francisco Breweries, Limited, a Corporation, Defendant.

YOU ARE HEREBY DIRECTED to appear and answer the complaint in an action entitled as above, brought against you in the Superior Court of the State of California, in and for the City and County of San Francisco, within ten days after the service on you on this summons—if served within this City and County; or within thirty days if served elsewhere.



And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract or will apply to the Court for the relief demanded in the complaint.

GIVEN under my hand and seal of the Superior Court at the City and County of San Francisco, State of California, the 29th day of August, A. D. 1914.

[Seal]

H. I. MULCREVY,  
Clerk.

By H. I. Porter,  
Deputy Clerk. [4]

State of California,  
City and County of San Francisco,—ss.

Emmett I. Donohue, being duly sworn, deposes and says: That he is, and was at the time of the service of the Summons herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within entitled action; that he personally served the within Summons on the hereinafter named defendant, whom deponent knew to be the person named in said Summons by delivering to and leaving with —— of said defendant personally, at the places hereinafter set forth in the State of California, and at the time set opposition —— respective name—, a copy of said Summons attached to a copy of the complaint referred to in said Summons.

| Names of Defendants Served.                                                                    | Place where Served.                  | Time of Service.        |
|------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------|
| THOMAS ALTON, General<br>Manager of The San<br>Francisco Breweries,<br>Limited, a Corporation. | City and County of<br>San Francisco. | September 1st,<br>1914. |

EMMETT I. DONOHUE,

Subscribed and sworn to before me this 1st day of  
September, A. D. 1914.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San  
Francisco, State of California.

[Endorsed]: No. 58,860. In the Superior Court  
of the State of California, in and for the City and  
County of San Francisco. Sylvia A. Brainard vs.  
The San Francisco Breweries Limited, a Corpora-  
tion. Summons. Filed Sep. 2, 1914. H. I. Mul-  
crevy, Clerk. By H. Brunner, Deputy Clerk. [5]

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*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860—Dept. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

**Notice of Petition for Removal.**

To the Plaintiff Above Named and to Messrs. Harrison & Harrison, and Byron F. Stone, Esq., Attorneys for Plaintiff:

You and each of you will please take notice that the defendant The San Francisco Breweries, Limited, a corporation, will, at the courtroom of Department No. 5 of the above-entitled court, in the City Hall, No. 1231 Market Street, San Francisco, at the hour of ten o'clock A. M. on Friday, the 11th day of September, 1914, file a petition for the removal of the above-entitled cause to the District Court of the United States in and for the Northern District of California, Second Division, and at the same time will file a bond for such removal with good and sufficient sureties, all as provided for in Section 29 of the Judicial Code known as "Act of March 3, 1911, United States Statutes." Full, true and correct copies of said petition and bond are hereto annexed, marked respectively "Exhibit 'A' " and "Exhibit 'B,' " and by reference made a part hereof.

You are further notified that at said time and place said defendant The San Francisco Breweries, Limited, a corporation, will apply to the above-entitled Honorable Court that an order be then and there made accepting said petition and bond, requiring the clerk of the above-entitled court to prepare and certify a copy of the record in said suit, and directing the transfer thereof to said District Court of the United States in and for [6] the Northern District of California, Second Division.



Said motion will be based upon all the papers and files herein, including said petition and bond to be then filed, and will be made for the reason that plaintiff is now and was at the time of the commencement of the above-entitled action a resident and citizen of the State of California, and that said defendant is now and at all of said times was a resident and citizen of the United Kingdom of Great Britain and Ireland.

Dated the 10th day of September, 1914.

H. B. M. MILLER,

Attorney for Petitioner and Defendant, The San Francisco Breweries, Limited.

HOEFLE & MORRIS,

Of Counsel for Defendant.

**Order Shortening Time.**

Upon reading and filing the foregoing notice of petition and good cause appearing therefor, IT IS HEREBY ORDERED that the time within which said notice of motion may be served be and the same is hereby shortened so that if said notice of petition be served upon plaintiff's attorneys at any time prior to five P. M. on Thursday, the 10th day of September, 1914, such service shall be valid and of the same effect as if five days notice had been given.

Done in open court this 10th day of September, 1914.

MARCEL E. CERF,

Judge of the Superior Court. [7]

[Endorsed]: Due service and receipt of a copy of the within Notice this 10th day of September, 1914, is hereby admitted.

BYRON F. STONE, Jr.,  
Attorney for Plaintiff.

[Endorsed]: Filed Sep. 11, 1914. H. I. Mulcrevy,  
Clerk. By H. Brunner, Deputy Clerk. [8]

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“EXHIBIT A.”

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860—Dept. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

PETITION FOR REMOVAL OF CAUSE.

To the Honorable the Superior Court of the State of  
California, in and for the City and County of  
San Francisco:

The petition of The San Francisco Breweries,  
Limited, a corporation, the defendant in the above-  
entitled cause, respectfully shows:

That said action is a suit of a civil nature, of which  
the District Court of the United States in and for  
the Northern District of California, Second Divi-  
sion, has original jurisdiction, and has been brought  
and is now pending in this Honorable Court and has

not yet been tried, nor has the time within which this defendant is required by the laws of the State of California, or any rule or rules of this Honorable Court, to answer or plead to the complaint elapsed or expired, and the matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of Three Thousand (3,000) Dollars;

That the plaintiff, at the time of the commencement of said action, was and now is a citizen of the State of California; that the defendant was at the time of the commencement of said suit, ever since has been, and now is, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland and a citizen and resident [9] thereof, having its principal place of business in the City of London, in said United Kingdom;

That there are no other parties to said suit except said plaintiff and said defendant;

That by reason of the premises this *petition*, said defendant, desires and is entitled to have said suit removed from said Superior Court of the State of California in and for the City and County of San Francisco into the District Court of the United States in and for the Northern District of California, Second Division;

That the said District Court of the United States in and for the Northern District of California, Second Division, sitting at the City and County of San Francisco, is the District Court of the United States for the proper district, being the District Court of



the United States held in the district where said suit is pending;

Your petitioner presents herewith a bond with good and sufficient sureties as provided by statute that it will, within thirty days from the date of the filing of this petition, enter in said District Court of the United States a certified copy of the record of the above-entitled suit, and for the payment of all costs that may be awarded by said District Court of the United States in and for the Northern District of California, Second Division, if the said District Court of the United States shall hold that this suit was wrongfully or improperly removed thereto, and also for defendant's appearing therein,

WHEREFORE, your petitioner prays that this Court proceed no further herein except to make the order of removal as required by law, and accept this petition and the bond presented herewith, and direct a certified copy of the record herein to be made by [10] said Court as provided by law and as in duty bound.

H. B. M. MILLER,

Attorney for Petitioner and Defendant, The San Francisco Breweries, Limited.

HOEFLE & MORRIS,

Of Counsel for Said Petitioner.

State of California,

City and County of San Francisco,—ss.

Thomas Alton, being duly sworn, deposes and says:

That he is the general manager, agent and attorney in fact of the San Francisco Breweries, Limited,

a corporation, the defendant in the above-entitled action, and the petitioner in the above petition; that affiant has read said petition and knows the contents thereof and that the same is true of his own knowledge.

THOS. ALTON.

Subscribed and sworn to before me this 10th day of September, 1914.

[Seal] W. H. PYBURN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Sept. 11, 1914. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk. [11]

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“EXHIBIT B.”

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860—Dept. No. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Defendant.

BOND ON REMOVAL.

KNOW ALL MEN BY THESE PRESENTS:  
That The San Francisco Breweries, Limited, a corporation, as principal, and Leon E. Morris and R. C. Burnett, as sureties, are held and firmly bound unto Sylvia A. Brainard, the plaintiff in the above-entitled action, her heirs, executors and administrators,



in the sum of \$500, lawful money of the United States, for the payment of which well and truly to be made, we and each of us bind ourselves, and each of our heirs, executors and administrators and successors, jointly and severally, firmly by these presents.

Dated this 10th day of September, 1914.

The conditions of this obligation are such that whereas the said The San Francisco Breweries, Limited, a corporation, has applied, or is about to apply, to the above-entitled Superior Court for the removal of the above-entitled action therein pending to the District Court of the United States in and for the Northern District of California, Second Division, for further proceedings, upon the grounds in said petition set forth, and that all further proceedings in said action in said Superior Court be stayed;

NOW, THEREFORE, if said The San Francisco Breweries, Limited, a corporation, shall within thirty days from the date of the filing of said petition for removal enter in said District Court of the [12] United States in and for the Northern District of California, Second Division, a certified copy of the record in such suit, and shall pay all costs that may be awarded therein by said District Court of the United States in and for the Northern District of California, Second Division, if said last-named Court shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear in said suit, then this obligation shall be void, other-

wise shall remain in full force and effect.

THE SAN FRANCISCO BREWERIES,  
LIMITED,

[Seal]

By THOS. ALTON,

General Manager, Agent and Attorney in Fact.

LEON E. MORRIS.

R. C. BURNETT.

State of California,

City and County of San Francisco,—ss.

Leon E. Morris and R. C. Burnett, the sureties named in the foregoing bond, being first duly sworn, each for himself deposes and says as follows: I am the same person whose name is subscribed to the foregoing bond, and I state I am a householder and resident of the City and County and State aforesaid, and that I am worth the sum of five hundred (500) dollars named therein as the penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

LEON E. MORRIS.

R. C. BURNETT.

Subscribed and sworn to before me this 10th day of September, 1914.

[Seal]

W. H. PYBURN,

Notary Public in and for the City and County of San Francisco, State of California. [13]

The above and foregoing bond is hereby approved.

Dated: September 11, 1914.

GEO. A. STURTEVANT,

Judge of the Superior Court.

[Endorsed]: Filed Sep. 11, 1914. H. I. Mulcrevy,  
Clerk. By H. Brunner, Deputy Clerk. [14]

No. 58,860.

Dept. 5.

TRANSFER.

SUPERIOR COURT, SAN FRANCISCO.

BRAINARD

vs.

SAN FRANCISCO BREWERIES.

COURT CASE.

IT IS HEREBY ORDERED that the above-entitled case be re-assigned to Department Eight for the hearing of further proceedings.

Dated September 11, 1914.

GEO. A. STURTEVANT,

Presiding Judge.

HARRISON & HARRISON,

Attorneys for Plaintiff.

HOEFLE & MORRIS,

Attorneys for Defendant.

REASON: Ord. of Removal only.

[Endorsed]: Filed Sept. 11, 1914. H. I. Mulcrevy,  
Clerk. By H. Brunner, Deputy Clerk. [15]

---

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860—Dept. No. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Defendant.



**Petition for Removal of Cause.**

To the Honorable the Superior Court of the State of California, in and for the City and County of San Francisco:

The petition of The San Francisco Breweries, Limited, a corporation, the defendant in the above-entitled cause, respectfully shows:

That said action is a suit of a civil nature, of which the District Court of the United States in and for the Northern District of California, Second Division, has original jurisdiction, and has been brought and is now pending in this Honorable Court and has not yet been tried, nor has the time within which this defendant is required by the laws of the State of California, or any rule or rules of this Honorable Court, to answer or plead to the complaint elapsed or expired, and the matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of Three Thousand (3,000) Dollars;

That the plaintiff, at the time of the commencement of said action was and now is a citizen of the State of California; that the defendant was at the time of the commencement of said suit, ever since has been, and now is, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland and a citizen and resident thereof [16] having its principal place of business in the City of London, in said United Kingdom;

That there are no other parties to said suit except said plaintiff and said defendant;

That by reason of the premises this petitioner, said defendant, desires and is entitled to have said suit removed from said Superior Court of the State of California in and for the City and County of San Francisco into the District Court of the United States in and for the Northern District of California, Second Division;

That the said District Court of the United States in and for the Northern District of California, Second Division, sitting at the City and County of San Francisco, is the District Court of the United States for the proper district, being the District Court of the United States held in the district where said suit is pending;

Your petitioner presents herewith a bond with good and sufficient sureties as provided by statute that it will, within thirty days from the date of the filing of this petition, enter in said District Court of the United States a certified copy of the record of the above-entitled suit, and for the payment of all costs that may be awarded by said District Court of the United States in and for the Northern District of California, Second Division, if the said District Court of the United States shall hold that this suit was wrongfully or improperly removed thereto, and also for defendant's appearing therein.

WHEREFORE, your petitioner prays that this Court proceed no further herein except to make the order of removal as required by law, and accept this petition and the bond presented herewith, and direct a certified copy of the record herein to be made by

[17] said court as provided by law and as in duty bound.

H. B. M. MILLER,  
Attorney for Petitioner and Defendant, The SAN  
Francisco Breweries, Limited.  
HOEFLER & MORRIS,  
Of Counsel for said Petitioner.

State of California,  
City and County of San Francisco,—ss.

Thomas Alton, being duly sworn, deposes and says:

That he is the general manager, agent and attorney in fact of the San Francisco Breweries, Limited, a corporation, the defendant in the above-entitled action, and the petitioner in the above petition; that affiant has read said petition and knows the contents thereof and that the same is true of his own knowledge.

THOS. ALTON.

Subscribed and sworn to before me this 10th day of September, 1914.

[Seal] W. H. PYBURN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

[Endorsed]: Filed Sep. 11, 1914. H. I. Mulcrevy,  
Clerk. By H. Brunner, Deputy Clerk. [18]



*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860—Dept. No. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Defendant.

**Bond on Removal.**

KNOW ALL MEN BY THESE PRESENTS:

That The San Francisco Breweries, Limited, a corporation, as principal, and Leon E. Morris, and R. C. Burnett, as sureties, are held and firmly bound unto Sylvia A. Brainard, the plaintiff in the above-entitled action, her heirs, executors and administrators, in the sum of \$500, lawful money of the United States, for the payment of which well and truly to be made, we and each of us bind ourselves, and each of our heirs, executors and administrators and successors, jointly and severally, firmly by these presents:

Dated this 10th day of September, 1914.

The conditions of this obligation are such that whereas the said The San Francisco Breweries, Limited, a corporation, has applied, or is about to apply, to the above-entitled Superior Court for the removal of the above-entitled action therein pending to the District Court of the United States in and for the Northern District of California, Second Division, for

further proceedings, upon the grounds in said petition set forth, and that all further proceedings in said action in said Superior Court be stayed;

NOW, THEREFORE, if said The San Francisco Breweries, Limited, a corporation, shall within thirty days from the date of the filing of said petition for removal enter in said District [19] Court of the United States in and for the Northern District of California, Second Division, a certified copy of the record in such suit, and shall pay all costs that may be awarded therein by said District Court of the United States in and for the Northern District of California, Second Division, if said last-named Court shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear in said suit, then this obligation shall be void, otherwise shall remain in full force and effect.

THE SAN FRANCISCO BREWERIES,  
LIMITED,

[Seal] By THOS. ALTON,  
General Manager, Agent, and Attorney in Fact.  
LEON E. MORRIS.  
R. C. BURNETT.

State of California,

City and County of San Francisco,—ss.

Leon E. Morris and R. C. Burnett, the sureties named in the foregoing bond, being first duly sworn, each for himself depose and says as follows: I am the same person whose name is subscribed to the foregoing bond, and I state I am a householder and resident of the City and County and State aforesaid, and



that I am worth the sum of five hundred (500) dollars named therein as the penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

LEON E. MORRIS.

R. C. BURNETT.

Subscribed and sworn to before me this 10th day of September, 1914.

[Seal]

W. H. PYBURN,

Notary Public in and for the City and County of San Francisco, State of California. [20]

The above and foregoing bond is hereby approved.

Dated: September 11, 1914.

GEO. A. STURTEVANT,

Judge of the Superior Court.

[Endorsed]: Filed Sep. 11, 1914. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk. [21]

---

*In the Superior Court of the State of California, in and for the City and County of San Francisco.*

No. 58,860—Dept. No. 5.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED, a Corporation,

Defendant.

**Order for Removal of Cause.**

This cause coming on for hearing upon application of the defendant herein for an order transferring

this cause to the District Court of the United States in and for the Northern District of California, and it appearing to the Court that the defendant has filed its petition for such removal in due form of law, and that the defendant has filed its bond duly conditioned, with good and sufficient sureties, as provided by law, and said petition and bond being now filed with the above-entitled Court, and it appearing to the Court that this is a proper cause for removal to said District Court of the United States in and for the Northern District of California.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that this cause be and it hereby is removed to the District Court of the United States in and for the Northern District of California, and the clerk of this court is hereby directed to make up a record in said cause for transmission to said United States District Court forthwith.

Done in open court this 11th day of September, 1914.

GEO. A. STURTEVANT,  
Judge of the Superior Court.

[Endorsed]: Filed Sept. 11, 1914. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk. [22]

**[Certificate of County Clerk to Transcript of Record  
on Removal.]**

*In the Superior Court of the State of California, in  
and for the City and County of San Francisco.*

No. 58,860.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court in and for the said city and county, hereby certify the above and foregoing to be a full, true and correct copy of the record and the whole thereof in the above-entitled suit heretofore pending in said Superior Court, being the suit numbered 58,860, wherein Sylvia A. Brainard is plaintiff and The San Francisco Breweries, Limited, a corporation, is defendant, said record consisting of:

The complaint filed by said plaintiff in said suit on the 29th day of August, 1914; and summons Sept. 2, 1914.

The defendant's notice of petition for removal, filed by said defendant in said suit on the 11th day of September, 1914;

The order transferring cause made and filed on the 11th day of September, 1914;

The defendant's petition for removal of cause, filed on the 11th day of September, 1914;

The bond on removal of cause, filed on the 11th day of September, 1914; and

Order for removal of cause to the District Court of the [23] United States in and for the Northern District of California, made and filed on September 11, 1914;

All as appears on the files and of record in my office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Superior Court at my office in said City and County of San Francisco this 16th day of September, 1914.

[Seal]

H. I. MULCREVY,

Clerk.

By H. Brunner,

Deputy Clerk.

[Endorsed]: No. 15,793. United States District Court, in and for the Northern District of California, Second Division. Sylvia A. Brainard, Plaintiff, vs. The San Francisco Breweries, Limited, a Corporation, Defendant. Certified Copy of Record. Filed Sep. 16, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [24]



*In the United States District Court, Northern District of California, Second Division.*

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Defendant.

**Answer.**

Now comes the defendant, The San Francisco Breweries, Limited, a corporation, and, answering the complaint heretofore served and filed herein, admits, alleges and denies as follows, to wit:

I.

As to the paragraph in said complaint numbered I, this defendant admits that it is, and at all the times in the complaint stated was, a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and at all said times was and now is doing business in the State of California.

II.

As to the paragraph in said complaint numbered II, this defendant admits that, during a part of the day of the 29th day of May, 1914, in the City of Oakland, County of Alameda, State of California, it had under its control and management, and was using in and about the regular course of its business, a certain delivery wagon, and a team of two horses by which the said delivery wagon was drawn; but this

defendant denies that, on that date or at any time or at all, it had in its employ a certain or any unskillful or incompetent or careless servant named Harry Crow, or of any name whatever, who was employed by the defendant as a driver, or in [25] any capacity, or who, on said 29th day of May, 1914, or at any time, in or about the business of the defendant or within the scope of his said or any employment, was engaged in driving said or any horses or anything whatever.

### III.

As to the paragraph in said complaint numbered III, this defendant denies that, on the 29th day of May, 1914, or while said or any horses and said or any delivery wagon, or either thereof, were under the control or management of the defendant, or at any time or at all, the said Harry Crow, or any employee of the defendant, so or at all unskillfully or carelessly or negligently conducted himself in or about the driving or management of said or any horses which were then and there or at all harnessed to said or any delivery wagon, or in or about anything whatever, that said or any horses, by reason of the unskillfulness or carelessness or negligence of said Harry Crow, or of any employee of this defendant, took fright or escaped from his or their control or ran away, drawing after them said or any delivery wagon or anything else.

### IV.

As to the paragraph in said complaint numbered IV, this defendant denies that the plaintiff, immediately or at all after said or any horses escaped from

the control of said Harry Crow, or from the control of any employee of this defendant, either as alleged in said complaint or otherwise, was lawfully, or in the exercise of due or any care, or otherwise or at all, on the sidewalk at the northwesterly corner of the intersection of Twentieth Street and Broadway in said City of Oakland or elsewhere; and this defendant denies that, by reason of said or any negligence of the defendant, or of any employee of the defendant, the plaintiff, while on said or any sidewalk or elsewhere, or without any fault on her part or otherwise or at all, was violently or at all struck [26] by said or any runaway horses or anything whatever, or was thrown down or kicked or trampled on by them, or that she thereby, or because of any negligence of this defendant or of any of its employees, sustained a compound comminuted fracture, or any fracture, of her left or either thigh, or that the knee joint of her left or either leg was crushed, or her right or either leg was cut or bruised, or that she sustained various or any other injuries, or was made sick or sore or bruised or lame; and this defendant denies that the plaintiff, by reason of said or any negligence of the defendant, or of any of its employees, or by reason of being struck or thrown down or kicked or trampled on, either as alleged in said complaint or otherwise, has been, ever or at all since the 29th day of May, 1914, or since any time, or still is, sick or sore or bruised or lame, or is or will be permanently lame; and this defendant denies that, by reason of said or any injuries sustained by the plaintiff by or through any negligence whatever on the



part of this defendant or any of its employees, the plaintiff's left or either knee is or will be permanently or at all stiff, or that her left or either leg is or will be permanently or at all shorter than her right leg; and this defendant denies that, by reason of any negligence of the defendant or of any of its agents, servants or employees, the plaintiff has been or is damaged in the sum of \$25,000.00, or any sum whatever; and this defendant alleges that it has no knowledge, information or belief as to the nature or extent of any injuries received by, or damages caused to, the said plaintiff, and therefore and on that ground it denies that the said plaintiff ever or at all was injured, either as in said complaint alleged or otherwise, or that she ever was or is at all damaged in the sum of \$25,000, or in any sum whatever.

WHEREFORE this defendant prays that this action be dismissed as against it, and that it be granted its costs and disbursements [27] herein.

H. B. M. MILLER,  
Attorney for Defendant.

HOEFLE & MORRIS,  
Of Counsel.

State of California,  
City and County of San Francisco,—ss.

Thomas Alton, being first duly sworn, deposes and says:

That he is an officer of the defendant corporation, to wit, general manager thereof, and makes this verification for and on behalf of said corporation defendant; that he has read the foregoing answer and knows the contents thereof, and that the same is true



of his own knowledge, except as to the matters therein stated upon his information or belief, and that as to those matters he believes it to be true.

THOS. ALTON.

Subscribed and sworn to before me this 10th day of November, 1914.

[Seal]

W. H. PYBURN,  
Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within answer is hereby admitted this 10th day of November, 1914.

HARRISON & HARRISON,  
BYRON F. STONE,

Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 10, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

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*In the United States District Court, Northern Dis-  
trict of California, Second Division.*

No. 15,793.

SYLVIA BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

**Verdict.**

We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of

30            *The San Francisco Breweries, Ltd.,*

Eight Thousand (\$8,000) and no/100 Dollars.

FRANK W. MARSTON,

Foreman.

[Endorsed]: Filed April 15, 1915. Walter B. Maling, Clerk. [29]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 15,793.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIM-  
ITED, a Corporation,

Defendant.

### **Judgment on Verdict.**

This cause having come on regularly for trial upon the 13th day of April, 1915, being a day in the March, 1915, Term of said court, before the Court and a jury of twelve men, duly impaneled and sworn to try the issue joined herein; Stanley Moore, Harrison & Harrison, Byron F. Stone and George R. Ford, Esqrs., appearing as attorneys for plaintiff, and H. B. M. Miller and William Rix, Esqrs., appearing as attorneys for the defendant; and the trial having been proceeded with on the 14th and 15th days of April, all in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after

arguments by the attorneys, and the instruction of the Court, having been submitted to the jury, and the jury having subsequently rendered the following verdict, which was ordered recorded, viz: "We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of Eight thousand (\$8,000) and no/100 Dollars. Frank W. Marston, Foreman"—and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Sylvia A. Brainard, plaintiff, do have and recover of and from The San Francisco Breweries, Limited, a corporation, defendant, the sum [30] of Eight thousand and 00/100 (\$8,000.00) Dollars, together with her costs in this behalf expended taxed at \$52.80.

Judgment entered April 15, 1915.

WALTER B. MALING,  
Clerk.

A True Copy. Attest:

[Seal] WALTER B. MALING,  
Clerk.

[Endorsed]: Filed April 15, 1915. Walter B. Maling, Clerk. [31]

**[Certificate of Clerk U. S. District Court to  
Judgment-roll.]**

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*In the District Court of the United States for the  
Northern District of California.*

No. 15,793.

SYLVIA A. BRAINARD,

vs.

THE SAN FRANCISCO BREWERIES, LTD., a  
Corp.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 15th day of April, 1915.

[Seal]

W. B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Endorsed]: Filed April 15, 1915. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.



*In the District Court of the United States for the  
Northern District of California, Second Division.*

No. 15,792.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LTD., a  
Corporation,

Defendant.

**Defendant's Engrossed Bill of Exceptions.**

BE IT REMEMBERED that this cause came on regularly for trial before the Honorable WILLIAM C. VAN FLEET, Judge of the above-entitled court, sitting with a jury, and was tried on the 13th, 14th and 15th days of April, 1915, Messrs. Harrison & Harrison, Byron F. Stone, Esq., George K. Ford, Esq., and Stanley Moore, Esq., appearing as attorneys for the plaintiff, and H. B. M. Miller, Esq., and William Rix, Esq., appearing as attorneys for the defendant, and the following proceedings were had and testimony taken.

The jury was duly and regularly empanelled to try said cause, and thereupon Mr. Moore made an opening statement to said jury on behalf of the plaintiff.

**[Testimony of Charles Thun, for Plaintiff.]**

Mr. CHARLES THUN was then called as a witness on behalf of the plaintiff and, on being first duly sworn, testified as follows, to wit:

To Mr. MOORE.—My name is Charles Thun; I

(Testimony of Charles Thun.)

live at 701 Fallon [33—1] Street in the City of Oakland, and, on the 29th day of May, 1914 I had a boarding stable. I run a kind of service stable at 207 Washington Street, close to Second, and on that day I rented a team to the Wieland Brewery Company. I remember that day; the day before that they called me up and asked me if I had a team I could rent; I told them I had one, that it was a free team and I did not like to let everybody have it; they said they would take good care of it. By free team I mean a free team in traveling. I suppose it was the manager that called me up, I do not know his name; I know him when I see him. I took the team over there the next morning at seven o'clock and saw the man, I suppose it was, that was taking care of the barn; I told him about it; I do not know his name; he was the man I saw there taking care of the barn. I told him the team had done nothing for a couple of days, to be a little careful with them because a team that does not do anything for a couple of days, they are feeling quite full of life and a person cannot trust them any. He said he would look after that, and I left the team there. They told me to telephone them and find out whether they wanted the team the next day; I called them up on the phone about half-past three, and they told me to come over and get them about half-past five, and I went over to get them at that time. I rang up about half-past three, as near as I can remember; I got there about half-past five, and the team was standing in the yard hooked to the wagon. By the word yard I mean

(Testimony of Charles Thun.)

kind of a shed or floor boarded up from the outside; there is a door where they drive in and out through.

There were then introduced in evidence on the part of the plaintiff three pictures of the premises of the defendant, which were marked respectively "Plaintiff's Exhibits 1, 2 and 3" which pictures were admitted to be correct representations of [34—2] said premises generally, and one picture of the corner of Broadway and Twentieth Street where the accident happened to plaintiff, marked as "Plaintiff's Exhibit 4."

(Witness continuing.) When I got there about half past five in the evening, the team was standing there in the yard, back aways from the door in "Plaintiff's Exhibit No. 1," over which I have marked an X, about twenty or thirty feet back I think. While on each of the two pictures shown me one of the doors is shown as closed, at the time of the accident both doors were open; the horses were headed toward Broadway as they were standing hitched to the wagon.

Q. (By Mr. MOORE.) When you got there upon that occasion and saw the team standing there, will you state whether or not they were tied back or hitched back when you first went in?

A. Well, I never paid no attention to it whether they were or not.

Q. Did you notice at the time you first went in there, or before the team started off, whether or not the reins were fastened back at the seat?

A. Well, I came from in back of the wagon and I



(Testimony of Charles Thun.)

never noticed whether they were hitched back to the seat or not.

Q. What did you do when you came in there about half past five that afternoon? What did you do and where did you go?

A. Well, when I came in there and they says, "There's your team." He said, "Hold on and we will unhitch 'em for you." Then the driver and me started up toward the wagon and I started for the office to make a settlement of the day's work and he started to unhook them, and I started in the doorway and they started off.

(Witness continuing.) When I said "they said they would unhitch them for me," I meant one of the attendants there. When [35—3] I brought the horses there in the morning I did not hitch them to the wagon; I think the driver and the fellow who was taking care of the barn did; I would not say for sure which one it was; any way, it was the people who were working for the brewery. It was the driver who said "we will unhitch them."

Q. (By Mr. MOORE.) You stepped to the office to settle for the time of the team, did you?

A. Yes, sir.

Q. Whereabouts is the office?

A. It is right close to Broadway, it is right in from Broadway.

Q. Could you show on one of these pictures here where the location of that office is?

A. Right here.



(Testimony of Charles Thun.)

Mr. MOORE.—For the benefit of the record, the witness calls attention to a small doorway of ordinary size, that is shown in the picture and that is marked with the figures “1931,” being this doorway right here, gentlemen.

(Witness continuing.) That is not the doorway I went in; I went in from the back. There is a door into this office off the main floor of the brewery, and it was by means of that that I was approaching the office.

Q. (By Mr. MOORE.) As you were walking over in the direction of that doorway, what, if anything, did you see the driver do, or where, if anywhere, did you see the driver go?

A. We both came up to the wagon and I turned in back of the wagon to go into the door, and he went on up to the team; that is the last I seen of him until the team started.

Q. When you were going toward the door, was the driver ahead of you or behind you?

A. We were walking side by side.

Q. Will you state whether or not you saw the driver at the [36—4] front wheel or step of the running board at any time?

A. No, sir, I could not say that I did not see it.

Q. Which side of the wagon were you on at the time the team started?

A. I had been on the left side; I just stepped on the door-sill when they started.

Q. And which side of the team was the driver on at that time? A. On the right side.

(Testimony of Charles Thun.)

Q. (By the COURT.) On the opposite side from where you were? A. Yes, sir.

Q. Where was the driver next when the team started? Where was he? Was he on the floor or where?

A. He had got out as far as the sidewalk; that was the next place I saw him.

Q. (By Mr. MOORE.) Where was the team at that time? A. The team was out on the street.

Q. Did you see the team start to go out on the street?

A. Well, it was done so quick, I could not see very much of it until they got just out of the door.

Q. Now, I want to ask you where the reins were at that time, and whether the reins were tied back, or whether the reins were dragging at the time they got out into the street and you were able to get a good look at them?

A. When I got a good look at them the accident happened, it had already happened.

Q. You saw them, didn't you, when they were out on the street and before the accident happened?

A. I seen them running, yes.

Q. Where were the reins then?

A. Well, I could not swear to just where they were then, [37—5] because I was too far behind.

Q. Don't you remember whether they were on the wagon at that time or were dragging?

A. No, sir; you see I was behind the wagon, I could not see ahead of the wagon.

Q. When you first saw the driver after the team

(Testimony of Charles Thun.)

started off, was the driver standing up or was he lying down?

A. He was lying down on the sidewalk.

Q. (By the COURT.) As though he had fallen over or been knocked over?

A. Fallen or knocked over, I could not say which.

Q. (By Mr. MOORE.) Did you see the team as it went out of the gate?

A. I seen them after they started, they got out through the door.

Q. You heard them start and you looked around, did you?

A. Yes; and when I looked around you could say they were between the outside of the door and in the door.

(Witness continuing.) When I last saw the driver he was lying on the sidewalk outside of the door; I never paid must attention to him; I ran toward the team; I did not stop to notice if the driver was still lying on the sidewalk. It is pretty hard to tell how fast the team were running; they were running very fast, they were at a full gallop; I ran after them but could not run as fast as they could; when they ran out they ran toward Twentieth Street, about one-half a block from the doorway of the brewery, I think about 250 feet; at the time I got to the team they were right on the corner on the sidewalk shown in "Plaintiff's Exhibit 4," and the plate glass on the sides of the doorway, they were broken; the skull of one of the horses was fractured and a policeman shot him. [38—6]



(Testimony of Charles Thun.)

Q. (By Mr. MOORE.) By this time the young lady had been taken away, had she?

A. She was taken away before; I never saw her; to-day is the first time I have ever seen her.

Q. When that team was going down the street from the doorway into the barn, when you saw them running down Broadway toward Twentieth Street, were the hind wheels of the wagon turning round?

A. Yes, sir.

Cross-examination.

Q. (By Mr. MILLER.) How far could you see the wagon at the time you looked and saw the wheels turning?

A. About a hundred feet.

Q. And the wagon was directly in front of you and was going away, wasn't it?

A. Yes.

Q. So you did not have a side view of it at all?

A. No, I could see the back part of the wagon.

Q. Do you remember of looking particularly and seeing that those wheels were turning?

A. Well, I seen the whole wagon.

Q. You saw the wagon going, but did you look particularly and see those wheels turning?

A. A person does not have to do that.

Q. I am asking you, did you look, and can you say now that you saw those wheels turning?

A. I didn't particularly just look at the wheels, because I was looking at the wagon.

Q. You saw the wagon going and you looked ahead, but you don't know, as a matter of fact, whether the wheels were turning or whether they were not, do you, of your own knowledge?



(Testimony of Charles Thun.)

A. Why, sure, a man can see that. [39—7]

Q. I am asking you if you did. Do you remember now having looked at that wagon and seeing that the wheels were turning?

A. Yes, I could see that the wheels were turning.

Q. What was it particularly that directed your attention on the wheels to see if they were turning?

A. There was no particular attention at all.

Q. You were somewhat excited, were you not?

A. Well, not very much excited; I am a man who never gets excited very much.

Q. You never get excited; you saw the team and they were going at a gallop, were they? A. Yes.

Q. And they were going away from you and were a hundred feet in front of you? A. Yes.

Q. And you remember now distinctly you saw the wheels turning? A. Yes, I saw the wheels turn.

(Witness continuing.) When I first went down to the Breweries place in the morning, the horses were harnessed up. I harnessed them in my barn and drove them down there; I don't remember whether I went into the entrance next to Twentieth Street or the one nearest 19th Street. When I drove the horses in there in the morning, the wagon was standing where they were standing in the evening; it was somewhere around there; when I got there in the evening, the horses were standing at the platform in the yard, about twenty or thirty feet back from the street with their heads facing Broadway or to the front of the building; it was not to Mr. Crow that I delivered the horses in the morning; it

(Testimony of Charles Thun.)

was another man; when I delivered them to him I immediately went away; both Mr. Cooper and Mr. McKinnon were there when I delivered the horses in the morning, but I don't know which one of them took the horses; when I went after the horses in the evening [40—8] these two men and Mr. Crow, the driver, were all there; when I went in I asked them if they were through with the team; I didn't ask any particular one; three of them were there. When someone in the Brewery phoned to me about getting the team, they asked me if I had a team to rent, and I said yes, I had; they wanted to know if it was a good team, and I said yes, it was a lively team.

Q. (By Mr. MILLER.) Did you tell them that it was a team that was wild and was liable to run away? A. Not wild.

Q. I say, did you tell that to the man?

A. I said to be careful with them, because they had not been doing anything for three days.

Q. Do you know to whom you talked?

A. The three men were there.

(Witness continuing.) I suppose it was Mr. Walker I talked with over the phone; I did not see him when I took the horses over in the morning, and I just started into the office to talk to him when I went after the team at night. When I took the horses over in the morning, I told the three men that were there to be careful with the horses, because they had not worked for three days and to watch out a little for them; the three men I saw were the two I have just seen, that is, Mr. Cooper and Mr. McKin-

(Testimony of Charles Thun.)

non, and the driver Mr. Crow; and when I told them that all three of them were together. I handed the lines over to one of them and they took the horses and hitched them up. I did not stand watching them; I went back to my business. I did not have time to stay there all day watching them.

Q. (By Mr. MILLER.) When did you find out where the office was?

A. They had horses from me the year before.

Q. (By the COURT.) They had rented horses from you before? A. Yes, the year before.

Q. (By Mr. MILLER.) So you knew where the office was, up at the front of that building with the entrance on Broadway? A. Yes, sir. [41—9]

(Witness continuing.) When I went around there that night to get the horses, I started for the office from in back of the wagon; I didn't go into the office, but went back into the shed; I think I went into the entrance nearest Nineteenth Street.

Q. (By Mr. MILLER.) Now, is it not a fact, Mr. Thun, that when you went there in the evening for the team, you went in this entrance nearer Nineteenth Street clear back to the back end around by the stable; is not that the way you went in?

A. Yes, sir.

Q. And, when you got to the stable you saw three men there? A. Yes, sir.

Q. Did not one of these men say to you, pointing up toward the front of the place, "There's your team, it is ready for you"?

A. Yes, they said that.



(Testimony of Charles Thun.)

Q. After they said that, you stayed around for a few minutes and talked with them, did you not?

A. Well, I don't know about a few minutes, a minute or two.

Q. But you did stand for a moment and talk?

A. Yes, sir.

Q. There was a horse being doctored or being fixed up in the stable there at the time?      A. Yes, sir.

Q. And you were somewhat interested in that and watched it for a few minutes and you talked with them?      A. Yes, sir.

Q. After doing so, did you not state, in the presence of each of these men, or in the presence of all of them we will say, "Well, I guess I'll unhitch and go home"?

A. Yes, I said, I guess I'll have to unhitch and then go home.

Q. And when you said that you started to go back here by the stable and walked up toward where the horses and wagon were?

A. Yes; and Crow went with me. He said, "I'll unhitch them for you." And it was his place to unhitch them anyhow. [42—10]

Q. When you did state "I'll unhitch them and go home," you started to walk towards them, did you not?      A. Yes, sir.

Q. After you started to walk toward them, and when you were probably ten feet on your way, did not Mr. Crow then say to you, "Well, I'll be a good fellow and help you"?

A. No, he did not say no such thing.



(Testimony of Charles Thun.)

Q. Did he say anything similar to that?

A. He said, "I'll unhitch them."

Q. That he would unhitch them?

A. Yes, and then we both walked up toward the wagon.

Q. He said he would unhitch them after you had said you would unhitch them and go home?

A. Yes, sir.

Q. And you walked on toward the wagon?

A. Yes, sir.

Q. Didn't you go up to the side of the wagon before he did?      A. No, sir, I didn't.

Q. This wagon was standing very close to this small platform, was it not?

A. The hind wheels were standing right by the door.

Q. Were the hind wheels standing as far back as the back end of the platform?

A. The hind wheels were standing right opposite the door so that there was room between the door and the wagon to get inside the door.

Q. (By the COURT.) What door are you speaking of?

A. Next to Broadway, the back door that goes into the store shed.

(Witness continuing.) There was no platform there, it was just a step; at the time I went on in front toward those horses I didn't go up to the horses at all; the hind wheels of the wagon were standing opposite that door and there was room enough behind [43—11] the wagon to walk in the door; he went up

(Testimony of Charles Thun.)

to the horses and I stopped in that door; I got as far as the doorsill and then the horses started away.

Q. When the horses started, do you know where Mr. Crow was? Did you see him?

A. No, I didn't see him until he was on the sidewalk like I repeated once before.

Q. You didn't see him get up on the wagon at all?

A. No, sir, I didn't.

Q. And you did not see him loosen any lines that were fastened to the seat at all?

A. No, sir, I didn't.

#### Redirect Examination.

They rented one horse from me the year before; they took good care of him, and so I let them have a team again; when I rented them the horse before, I got my pay from the gentleman with the red hair; I had been in that office on those occasions.

#### [Testimony of Miriam Hollister, for Plaintiff.]

MIRIAM HOLLISTER, was then called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows, to wit:

My name is Miriam Hollister; I reside in Oakland, at the Fabiola Hospital; am a student nurse there and was such in the month of May last; I am acquainted with Miss Brainard; she was also a student nurse there in May, 1914; I recollect leaving the hospital with her on the 29th of May, 1914, about 5:30. The hospital is at Moss Avenue and Thirty-eighth Street. When we left there we walked along Broadway toward Oakland; when we got to Twentieth and

(Testimony of Miriam Hollister.)

Broadway we saw a team coming, when it was about a rod off I imagine, just at the corner across the street; we were on the sidewalk and we turned; the team were running toward us at a full gallop; we turned and ran. I went back to [44—12] Broadway and Miss Brainard ran in the entrance of this store on the corner; it was all just in a moment, and I heard her scream, and I looked around and the team was on her; she was down.

“Plaintiff’s Exhibit No. 4” was then shown to the witness and was identified by her as the place where the accident happened to Miss Brainard.

(Witness continuing.) Miss Brainard was between the posts shown there and the building, lying down, and the team was right there also; one horse was down and had slid up right close to the building; Miss Brainard was conscious and was trying to get out; she was right under the horse, under his feet; she was right in the position where this man is in Plaintiff’s Exhibit 4; when we first saw the team, the team came very rapidly.

**[Testimony of Sylvia A. Brainard, for Plaintiff.]**

SYLVIA A. BRAINARD, the plaintiff, was then called as a witness on her own behalf and, on being first duly sworn, testified as follows, to wit:

To Mr. MOORE.—My name is Sylvia A. Brainard; I live at 2609 Grove Street, in Berkeley, with my father and brother; in May, 1914, I was living at the Fabiola Hospital; I was a student nurse there; I am thirty years old, and had been training as a nurse seventeen months at the time of the accident; I recol-



(Testimony of Sylvia A. Brainard.)

I left leaving the hospital with Miss Hollister, and I think we left the hospital a little after 5:00 P. M. to go down to Oakland; we walked down Broadway; just as we arrived at the corner of Broadway and Twentieth Street we saw this team just on the opposite corner crossing, not quite at the corner when we first saw it, and we turned to run; the team appeared to be travelling just about as fast as it could go. I turned and ran to this doorway (pointing to the doorway on the corner of Twentieth and Broadway shown in "Plaintiff's Exhibit 4"); I just got in the doorway and did not have time to [45—13] turn around when I felt the horse kick me, and I fell and felt them trampling on my knees; I was not unconscious; I remember lying upon the sidewalk and them pulling me from under the horse; there were two or three men there that rushed up right then and pulled me from under the horse and put me in the machine, and I was taken directly to the Fabiola Hospital, where I remained six months. I was injured on the 29th day of May, 1914, and was discharged from the hospital November 17th, 1914; during that time I was confined to my room for the entire period, all excepting the last week; then I was up on crutches trying to walk; I was then taken to my brother's home, 2415 Webster Street, in Berkeley; I could not get about at all excepting about the house on my crutches; I remained there from November until about the first week in January of this year, when I was taken to my own home, my father's home, and I have remained there ever since; I have been very



(Testimony of Sylvia A. Brainard.)

closely confined; I am not able to get out at all alone, and then only in a machine; I am not able to get into the cars yet; when I go up or down steps I must have someone to help me; I have no use whatever of the left limb; there is almost a constant ache in it, I would not call it pain, it is an ache all the time, sometimes more severely than others; it occurs always at night; it is very uncomfortable at night-time. It is also most painful when I have been lying down or sitting down and trying to get up; it is very difficult to change my position; I have to help my knee to move it, I cannot move it without lifting it; the aching is right in the knee. Since the operation was performed on my limb the day I was injured, there has been one other operation; this was August 7th, 1914. Dr. Cunningham performed these operations, and Dr. Sutherland assisted him; I do not know anything about the operations; I was under an anaesthetic. [46—14] I have the bill for the hospital, \$833.38; the doctor's services are not paid yet; I understand he has to again operate on the knee before it will stop draining; it has drained constantly ever since the time of the injury and is in that condition at present; I have paid nothing toward the doctor's services; I don't know the amount of the doctor's bill.

**[Testimony of Arthur L. Cunningham, for  
Plaintiff.]**

ARTHUR L. CUNNINGHAM was then called as a witness on behalf of the plaintiff and, on being first duly sworn, testified as follows, to wit:

My name is Arthur L. Cunningham; I reside in Oakland; I am a physician and surgeon and have been engaged in the practice of my profession in Oakland for twenty-five years. I am acquainted with the plaintiff in this action and have known her about one and a half or two years; in the latter part of May, last year, she was a member of a class of seventy-two girls at the Fabiola Hospital studying to become a nurse. The first time she became a patient of mine was in the latter part of May, 1914; I saw her somewhere about seven o'clock on the evening that she was hurt, at the Fabiola Hospital, and made an examination of her on that occasion, and found that the left thigh was crushed just above the knee joint; the soft tissues overlying the bone were lacerated two or three inches; spiculas of bone were lying in the bottom of the wound; the giant bone was crushed into three fragments, the center fragment was torn from it and turned upwards; the articulating surface of the knee joint was turning upwards; at the upper portion of the thigh bone was a long, narrow spicula, so that the two ends would barely lap with some shortening; the right leg sustained some soft tissues crushed, requiring quite a good many stitches and drainage; there were bruises and contusions of minor importance; the left thigh

(Testimony of Arthur L. Cunningham.)

bone, that would be the big bone that [47—15] runs from the knee joint up into the hip socket, that was broken in five or six places; the bone was split up its shaft; there were three fragments in the articulating surface of the bone. I have X-rays that show these fragments, and the first set was taken, I think, about four or five days, within a week, after the injury; two of these plates were taken within a week of the injuries; they show not only the nails as they were driven into the bone, but they also show the screws and the wires around the bone and then the two drainage tubes; these nails were driven into the bone to hold the fragments together; they are there yet. The first X-ray photos were taken after the operation had been performed; the knee joint was all fractured into three fragments; here (pointing to one of the X-ray photos first taken) is a drainage tube; these two spiculas as they came together here were fastened together by tiny screws and then wires put round them; the nails that appear in this X-ray picture, they were used as a part of the operation and were driven in to hold the fragments of the joint together; those nails are still there; this (pointing to photo) is wire that was twisted around the fragments.

The COURT.—I think, Mr. Moore, it may be well to have the doctor explain to the jury the occasion that gives rise to this operative treatment and also the general method, where there is a comminuted fracture, of securing the parts together in proper position.



(Testimony of Arthur L. Cunningham.)

A. The methods pursued are with screws or with nails or wires or sutures; these fragments were in the softer tissues of the bone; they were small fragments.

The COURT.—Just a moment, Doctor. Mr. Moore, those should not be presented to the jury until they are offered in evidence. (Referring to X-ray photos which Mr. Moore was showing to the jury.)  
[48—16]

Mr. MOORE.—Yes, your Honor; I offer them.

(Witness continuing.) These condyles, so-called, or the large portions of the bone, were so fractured that it left three fragments, and, in order to hold those three fragments, we took long silver nails and drove them right through; that held them in position; besides that, the thigh bone was fractured obliquely, and portions of the bone were crushed: I removed quite a number of fragments; still there were oblique areas, like my pencil might be, and these wires we put around them to hold the little screws together; that is shown in the latest pictures; the screws and bands were subsequently removed; after the bones had become sufficiently united so we could remove the foreign bodies, we took them out, but we never took out the long nails, they can be permitted to always remain there; here is the picture showing them (referring to one of the X-ray photos). This picture I took last week; there is no inflammation there.

Q. (By Mr. MOORE.) To what extent, if any,



(Testimony of Arthur L. Cunningham.)

was there a shortening in this limb, or how much shorter is this left limb than the right?

A. I think my last measurements gave me about an inch.

(Witness continuing.) I think the limb was kept encased in a plaster of Paris cast in the neighborhood of five months.

Q. Was there a second operation performed on the limb?

A. Only to remove these screws and wire bands.

Q. And that was some two or three months after the receipt of the injury? A. It was.

Q. (By the COURT.) What sort of union did you secure, Doctor?

A. Well, your Honor, I believe the union to be very good considering the nature of the injury; there is a small sequestra of bone right near the edge of the wound that is somewhat discharging [49—17] a little through a small sinus, a small opening. These last plates show a great deal of bone thrown out all around the injury.

Q. The age of the patient was such, that is, being young, as to afford a ready process of nature?

A. It was all in her favor, everything; she lost a great deal of blood from this, necessarily. If she had not been young she would not have survived it, I don't think.

Q. Have you secured what you would call a good result, that is, a comparatively good result?

A. Yes, Judge, I think so, very.

(Testimony of Arthur L. Cunningham.)

(Witness continuing.) I think it will be necessary for her to remain under treatment for about three months more; I think it will be a full year from the date of her injury before she will be well; the reason it would be necessary to give her treatment for another three months is that there is an area, the covering of the bone, the periosteum was denuded, torn off, and that little portion is broken away loose from the bone; it is called a sequestra; this discharge through a little opening, a sinus, that has to be looked after and kept clean, and possibly removed a little later by a small minor operation; that can be done at any time when she has time for it; I think it ought to be done pretty soon now. The drainage has been continuous, but very, very minor for, I suppose, the last five months—as soon as we removed the drainage tubes, which I think was two months after; there is some drainage going on there now through a very small little opening which nature has provided; nature keeps that open until this foreign matter is entirely thrown out. I was assisted in the case, or in the operations that have been made, by the interne at the Fabiola Hospital, Dr. Sutherland; he assisted me that [50—18] night with the aid of the regular operating staff, which consists of special nurses. The operation that was performed I think is the usual surgery for injuries of this kind, but such fractures as that are not of common occurrence; you do not require operative treatment for a simple fracture, but this was an extensive laceration and extensive fracture; we were obliged to make

(Testimony of Arthur L. Cunningham.)

further incisions in the leg so as to get at it, but those were placed in proper apposition and stitched, and they grew right together again.

Q. (By Mr. MOORE.) Why is it, Doctor, that, with that bony union set up there, there is such a long period of disability in a fracture of this kind?

A. It is hard to explain that. These bones were fractured obliquely and only the tip of them could be brought together that allows the bony salt to circulate through the bony canals, and if they can get that soft area of circulation nature will deposit bone all around it, beginning from each end of the bone at the bottom and building up; in this particular case that took a long time, partially because of the small, oblique areas lying together, and also because there was so much damage done to the soft tissues about it, and it had to be treated as an open fracture with drainage tubes.

Q. This treatment, if it continues for three months, will practically have extended over fourteen months, this injury occurring on May 29th, 1914, will it not, Doctor?      A. It will.

(Witness continuing.) I have not put in my bill for professional services, but have been requested so to do; I should say the operative work is worth in the neighborhood of \$500.00, and the subsequent attendance is worth at least \$250.00; that would be a matter of \$750.00 to date, and would be a very reasonable [51—19] bill. There will always result the shortening of the leg which I spoke of as about an inch, and there is no way to get around that, and



(Testimony of Arthur L. Cunningham.)

there will always *been* some impairment in the gait of the patient, she will never have more than ten per cent of motion in her knee because the fracture of the thigh bone extended into the knee joint, she will always have a stiff knee, a very stiff knee.

Q. So far as her continuing in the occupation of a trained nurse, Doctor, would she be suited to that occupation?      A. No.

Q. Would she be suited to any occupation that involved much physical labor, which included the standing upon her feet for any long time?      A. No.

Q. Why not?

A. Because, I should think, of the shortening in the first place rocking the hips out of position; in the second place, because it would be a number of years before she would get strength in that bone and muscle; the injury done to the soft parts alone would make it weak for a long period of time.

Q. What do you refer to when you say because of the rocking of the hips out of place?

A. In the shortening of the leg, that is going to rock the hips to meet that shortening.

Q. And is that liable to affect anything so far as the spine is concerned, or accomplish any curvature there?      A. Yes, it will twist the spine.

Q. Is there not any way to counterbalance that?

A. Raise the shoe.

Q. To what extent does that accomplish the result?

A. It will throw her more into plumb, of course.

Q. It is of assistance in that regard?

A. Yes, sir. [52—20]

(Testimony of Arthur L. Cunningham.)

Q. And where a person has a stiff knee with only ten per cent left and the shortening of an inch in the limb, those two circumstances impair the usefulness of the limb to a very great extent, do they not?

A. Yes, sir.

Q. And those conditions, in your opinion, are permanent and will continue?      A. I am sure of it.

Cross-examination.

Q. (By Mr. MILLER.) Doctor, you say that, due to the shortness of the limb, there may result a certain permanent disability to the spine or injury to the spine; I will ask you if it is not a fact that a shoe could be worn which would overcome that difficulty?

A. Yes, sir.

(Witness continuing.) All the extraneous matter shown in the X-ray photos, such as nails and wire and things, those were things that we used in treating the injury; they were necessities because of the splintering of the bones, which made it necessary to fasten them together.

Q. Doctor, would you say that, at the present time, as the result of the shortening of that limb, there is any injury whatsoever to the spine of the young lady?

A. No, I think not.

Redirect Examination.

To Mr. MOORE.—It is a fact that any person who favors very much one limb over the other and continually rests the major part of his weight on it, or at least habitually does so for periods of time, is liable to rock the hips, and, as a consequence of this,

(Testimony of Arthur L. Cunningham.)

curvature of the spine always results, and those conditions may be very serious in themselves. In the case of the plaintiff, she must, for a short period of time, favor the well limb over the one that sustained injury, because of the weakness of the muscles and the fear that will arise in her mind from an injury [53—21] like this; anybody with a fractured leg, even after the union is complete and strong, will favor it for weeks in a normal case; there is always an aching sensation in the instance of a fracture like this that is felt by the patient, due to blood pressure and due to atmospheric changes; I do not know that I can answer as to the period of time that that may continue; sometimes it is for a few months, sometimes it is for a few years that patients will complain, before storms are coming on or from increased humidity or dampness.

Q. (By the COURT.) It is something in the nature of rheumatic tendencies? A. Yes.

(Witness continuing.) The pelvis does accommodate itself to the shortening of one of the limbs, so that, so far as the mere shortening is concerned, it is not necessarily detrimental to locomotion, but it does it by rotation of the spine, and that rotation depending upon the degree of injury or of no injury to them.

Q. (By Mr. MILLER.) A shortening to the extent that you found in this case, Doctor, would that be almost exclusively overcome by the use of a shoe?

A. Yes, it can.



(Testimony of Arthur L. Cunningham.)

(Witness continuing.) I am one of the appointed surgeons at Fabiola Hospital and have been practising in Oakland for twenty-five years and one month.

**[Testimony of P. H. Eddins, Jr., for Plaintiff.]**

P. H. EDDINS, Jr., was then called as a witness on behalf of the plaintiff and, on being first duly sworn, testified as follows:

My name is P. H. Eddins, Jr., and I reside in Oakland, at the Y. M. C. A.; I am an automobile mechanic and at the present time am in the employ of the Standard Oil Company, and have been in its employ a little over a month; prior to that I was an [54—22] automobile driver, driving a big truck for the National Ice Cream Company, and that was my employment on the 29th day of May, 1914. On that day I was driving along Broadway in the vicinity of its intersection with Twentieth Street, about 5:20 P. M.; when I was about fifty feet from Twentieth Street on Broadway, I noticed a runaway team about twenty feet from the opposite corner, running down Broadway, that is, toward Berkeley. When I first laid eyes on them they were about twenty feet in the direction of Oakland from Twentieth and Broadway; they were coming, I should think, about twelve miles an hour; they were galloping; they were going out towards Berkeley. They made a very big circle to turn this corner; the horse hit his foot on the curb and skidded right into the building; Miss Brainard was found lying right on the curb crushed; I did not see Miss Brainard before this horse struck

(Testimony of P. H. Eddins, Jr.)

her, but just saw her fall; I saw her stumbling and I saw her fall. The horse's foot hit the curb and he kind of skidded, just like an automobile would skid, and his whole body went right toward her and into the wall; he fell on his side and then kind of slid right into her; I got a good view of the team at the time it rounded the corner; I did not notice anybody driving them and I did not notice the lines, whether they were tied to the wagon or not. When the horse struck the curb and skidded, they came in contact with a big post right on the corner of this building (pointing to building on the northwest corner of Twentieth and Broadway shown on "Plaintiff's Exhibit No. 4"); the tongue of the wagon struck the post kind of on the edge. (The witness was here shown "Plaintiff's Exhibit 4," and stated that it was a good representation of the corner where the accident occurred.) The big plate glass on the side of the building was all crushed; it was all broken to pieces; just as the crash came I saw the plaintiff [55—23] struggle and saw her fall just outside of the large plate glass; as the accident happened she made a struggle, then she fell right on the sidewalk; when she first came into my sight she was along the edge of the sidewalk next to the corner of the passageway; just as soon as I reached her I saw blood on the sidewalk and I ran into the garage and met a young fellow there that drives a car, and I told him that there was a young lady that was very badly injured and for him to get her out to the hospital as quickly as possible; he started his machine, pulled it out, and



(Testimony of P. H. Eddins, Jr.)

we stopped right in front of the door, and she was put into the machine by some of the crowd there and we rushed her right to the hospital; that garage was right at the corner of Twentieth and Broadway; I went to the hospital with her.

Here the plaintiff's case was rested, and Mr. Miller, on behalf of the defendant, then stated to the Court the following:

We desire to make a motion for a nonsuit, on the ground that the only thing shown by the testimony is that a team of horses, which had been rented to the defendant, ran away and injured the plaintiff; it is not shown that, at the time of running away and the injury to the plaintiff, they were in the charge or under the control of the defendant or any of its agents, servants or employees; there has not been shown any incompetency on the part of anybody connected with the defendant in any way, shape or form; the sole and only thing that has been shown is, as I stated first, that a team of horses, which had been rented to the defendant in the case, ran away; and secondly that the plaintiff in the action was injured. We contend that there is no showing of any kind or character, even tending to establish the allegation in the complaint of incompetency on the part of anyone connected with the defendant, or tending to show any negligence [56—24] of any kind or character upon the part of the defendant.

The COURT.—The motion is denied.

To which ruling the defendant then and  
Ex. 1. there excepted and the same is hereby designated as Exception No. 1.



(Testimony of P. H. Eddins, Jr.)

The defendant thereupon proceeded with the introduction of testimony in opposition to the complaint of the plaintiff and in support of defendant's answer, and the following testimony was introduced:

**[Testimony of Frank B. Ench, for Defendant.]**

FRANK B. ENCH was then called as a witness on behalf of the defendant and, on being first duly sworn, testified as follows, to wit:

To Mr. MILLER.—I am familiar with the premises occupied by the San Francisco Breweries in Oakland, on the west side of Broadway, between 19th and Twentieth Street, and I made a diagram of said premises according to scale; the diagram that is tacked up to the blackboard is the one I made. The sidewalk in front of the premises is twenty feet wide; the building is 92 feet 8 inches wide, and has two driveways, one toward Nineteenth Street and one about 35 feet from the Twentieth Street end of the building; the door nearest to Nineteenth Street is 10 feet and the other door is 9 feet 10 inches; in the entrance nearest Twentieth Street there are three doors, two of the doors have loading platforms as shown there; the one nearest to the front is 1 foot 8 inches wide, about a foot and a half high and seven feet long; the one back of that is 1 foot 6 inches wide, about seven feet long and about one and a half feet high. At the rear portion is a larger platform 5 feet 2 inches wide and about 12 feet long, and alongside of it is the door leading to the stable. From the place on the diagram I marked "A to B" the building is covered over with a roof to the point I

(Testimony of Frank B. Ench.)

have marked "E"; from the point I have marked "C to D" is [57—25] a long shed that is also covered with a roof the full length of the property; from "A to C" is a driveway with no roof over it, it goes back the full length; the office has a door leading from the sidewalk on Broadway, and a window facing toward the driveway, about the center of the wall on that side of the office, as shown in the diagram, and it has a door leading from the office into the bottling-house, that is the big room back of the office. The platform I first described, where the testimony shows that the horses were when Mr. Thun came after them, is 25 feet 3 inches back from the front edge of the building, and from the front edge of the building to the outside of the sidewalk is 20 feet, making the distance from that platform to the outside of the sidewalk approximately 45 feet and 3 inches. The distance from the front edge of the building back to the stable is 97 feet 41½ inches, and 25 feet deducted from that will show the distance from the platform first described back to the stable. (The diagram described was then introduced in evidence and marked as "Defendant's Exhibit 'A.' "

Cross-examination.

To Mr. MILLER.—There are three doors leading from the passageway where the horses were standing at the time they ran away into the portion of the building where the office was located, marked with three light lines on "Defendant's Exhibit A." The heavy lines represent the wall and the light lines represent the doorways; the doorway where the

(Testimony of Frank B. Ench.)

wagon was standing when the horses ran away is about six or seven inches longer than the platform alongside of it. I made this "Defendant's Exhibit A" last Monday. The platform in front of the door where the horses were standing when they ran away is a little over one foot in height; the surface of the platform is a single step from the ground; there is [58—26] no intermediate step there.

Q. (By Mr. MOORE.) Then, if I may be permitted to mark this, there is a doorway that roughly corresponds to these blue lines there? (Marking doorway with blue lines at the platform nearest to the street.) A. Yes, sir.

Q. Where is the nearest doorway; does that correspond or hold the same relation as the other doorways? A. Yes, sir.

Q. And the next one is up here? (pointing to first doorway or opening back of the one above referred to.)

A. Yes, sir; this has no platform.

Q. Can a man go into the doorway situate at either platform 1 or 2, and also pass from there into the office?

A. Yes, sir; he just walks right up there; this is all an open space here. (Pointing to open space back of office.)

**[Testimony of Thomas Walker, for Defendant.]**

THOMAS WALKER was then called as a witness on behalf of the defendant and, on being first duly sworn, testified as follows:

My name is Thomas Walker; I am bookkeeper for



(Testimony of Thomas Walker.)

the John Wieland Brewery Company, the Oakland agency of the John Wieland Brewery; its place of business is on the west side of Broadway, between Nineteenth and Twentieth, in Oakland; I have been in that capacity for about six or seven years on that side of the bay; I was acting in that capacity on the 28th and 29th days of May, 1914, and was there on both of those days. I know Charles Thun, and, in my capacity of bookkeeper of the defendant in this case, I had transactions with him regarding the hiring of a horse on the 28th day of May, 1914, the day prior to the accident to the plaintiff; the day prior to the accident, I got in communication with a man named Banzell, who was a horse-dealer, and I asked him if it was possible for him to rent me a team of horses— [59—27]

The COURT.—That is immaterial; state what transactions you had with Thun.

(Witness continuing.) I rang Thun up and asked him about the team of horses, and he told me that he would let me have them for, I think it was, two and a quarter for the day; I told him I wanted them the next morning; the only conversation that matured at that time with Thun was, he told me the horses were a light team, light weight, he told me the weight would be about 1100, and I said that would do, I said, all right, if that is the case, you bring them up to-morrow. That is all the conversation that occurred between him and myself at that time. I am informed he brought the horses over the next morning; I was not there, and when the team came

(Testimony of Thomas Walker.)

I had no conversation with him at all. I had never hired any horses from Thun before that time; the horses were used all day on the day they were brought there by Thun and driven by a driver of the name of Harry Crow; he was not a regular driver; they were brought back by Crow about half past four; shortly prior to the team being brought back, I had a conversation with Thun over the phone; he asked me if we would use the team the next day, and I told him no, I said, Thun, you call at half past five and the team is yours, we will be there with the team and it is yours at half past five. Crow was hired by the defendant to drive a bottled-beer wagon to which Thun's horses were hitched. After he came back about 4:30 we did not require that wagon or those horses to be driven any further that day, nor did we have any further work at which to put Mr Crow after he returned the horses and wagon; his work for that day was done, but his wages were not drawn until Saturday; if a driver has earned any wages during the week, he comes around on Saturday and gets them. I was in the office at the time the horses ran away; the moment [60—28] they started I could not see them; I have a window in the side of my office which showed me the horses going out of the driveway, and I could observe them from my front window in the office. On the street I saw them running, I saw them from the time they were on the sidewalk from my front office window; I saw them from that time until they proceeded about a hundred feet on the side of the

(Testimony of Thomas Walker.)

street, then they passed out of my view. Then I went out of the office. The window at the side of my office is the one shown on "Defendant's Exhibit 'A,'" on the left side of the same place marked "Office." The window in front of the office is the one shown on the Broadway side of the diagram.

Q. (By Mr. MILLER.) Were you at any time in a position where you could see, and did you see, whether or not the wheels of the wagon were dragging?

A. The wheels of the wagon were skidding.

Q. They were skidding?

A. They were skidding, and then they would turn slightly and skid again, as far as I could see them.

Q. When you say "skidding," you mean not rolling, or what do you mean?

The COURT.—Skidding is sliding sideways.

A. I don't mean that, your Honor; I mean they were just sliding forward and not turning; they were turning a little and then not turning.

Cross-examination.

To Mr. MOORE.—Mr. Thun never rented any horse to that agency where I was employed, not to my knowledge; I am there all of the time and I had all the hiring; I have no recollection of at any time previous ever having any business with Mr. Thun; that is, as far as my recollection goes. [61—29]

Q. Do you state positively that he did not hire a horse to your agency during a portion of the year before this?

A. When I say positively, Mr. Moore, I mean this



(Testimony of Thomas Walker.)

way, that I generally do the hiring, and I do not—

The COURT.—Do not reason it out; just state whether you can swear positively that he had not done so.

A. I cannot swear positively.

(Witness continuing.) Drivers are paid \$25.00 a week on a ten-hour day basis, from 7 A. M. to 5 P. M. Mr. Thun rang me up before half past four and prior to the time when Crow came in with Thun's horses, and I told him if he, Thun, would come around at half past five his team would be ready for him; that would be half an hour after the team's work was done; I told him that because I did not want him to wait for his horses when he came here; I know the time that the drivers get back from their different routes; I can figure out pretty well by my length of service there just about what time a man will be back there; I figured it out so that when Thun would come up there that the team would be ready for him.

The COURT.—That left an hour between half past four and half past five.

A. But, your Honor, I did not know that he was coming back at half past four.

Q. I thought you said you knew the route?

A. I figured it at about five o'clock, and, so as to give him time to get cleaned up and everything would be ready, I gave him half an hour.

(Witness continuing.) I figured everything would be ready for him by 5:30. I figured that the wagon would weigh about 1000 lbs.; it carried 80 cases of

(Testimony of Thomas Walker.)

beer, in each of which there [62—30] were 24 pints or 12 quarts; the wagon had a pipe framework to hold these cases; I do not think the wagon would weigh more than 1200 lbs. When I saw the team on the street they were going at a very good rate of speed, I should say eight or nine miles per hour; they were going as fast as a man could run, I presume. One of our men took after them, Mr. McKinnon, who was in the office talking to me. When the team got on the street they passed in front of the front window to my office. Mr. McKinnon instantly rushed for the door and pulled it open; the team had taken an angle across the street. Mr. McKinnon rushed up there; but the team was just a little ahead of him and it was going faster than he could run; I do not recollect whether I saw Crow on the sidewalk; I know his ankle was hurt; I did not see him fall to the sidewalk.

To Mr. RIX.—Mr. Crow was not a regular employee; he was employed for a day or two or for two or three days; at this time he was employed two or three days.

To the COURT.—I think at that time, your Honor, I had employed Crow for three or four days, but am not sure.

(Witness continuing.) On this occasion I think he was employed for three or four days; he was employed on the following day and afterwards until we did not require his services any more.

Q. (By Mr. MOORE.) Is it not a fact that you paid Mr. Crow off the next morning and he never

(Testimony of Thomas Walker.)

took a team out of your barn after Friday, May 29th, 1914?

A. I do not think so, I do not think that is a fact.

(Witness continuing.) He worked for me after May 29th, I feel positive of that.

**[Testimony of Alexander McKinnon, for Defendant.]**

ALEXANDER McKINNON was then called as a witness on behalf of the defendant and, upon being first duly sworn, testified [63—31] as follows:

My name is Alexander P. McKinnon; I am employed with the Wieland Brewery as a stable-man and driving part of the time, at Nineteenth and Broadway, Oakland.

The COURT.—The last witness and this witness have spoken of being employed by Wieland Brewery; the defendant is the San Francisco Breweries, Limited; how is that?

Mr. MILLER.—The San Francisco Breweries, Limited, is the defendant, and it owns a number of these different breweries, and among them the Wieland Brewing Company.

The COURT.—The defendant is an English company?

Mr. RIX.—Yes, your Honor, and the Wieland Brewery is one of the breweries taken over by it.

(Witness continuing.) It will be two years next month that I have been in the employ of the defendant at its place of business in Oakland on Broadway between Nineteenth and Twentieth Streets; I was in



(Testimony of Alexander McKinnon.)

its employ on the 29th day of May, 1914, and in the morning, about seven o'clock, was at its place of business; I left there about eight o'clock and got back there about four o'clock and was there until about seven o'clock. On the morning of May 29th, 1914, I saw Charles Thun, he brought a team of horses up there; they were hitched up to one of the brewer's wagons on the Alameda route; the horses were hitched up to the wagon in the shed there; Mr. Thun drove the team up in front of the wagon, the pole was put in and there were two or three of us round there, three of us, Mr. Crow, Mr. Cooper and myself, we all took a hand in hitching up.

Q. (By Mr. MILLER.) What was done by each party there at that time when the team was handed over in the morning?

A. Mr. Thun drove the team up in front of the wagon and [64—32] some one of the boys—it was not myself—put the pole in between the horses and Mr. Thun walked around in front of the team and stood there and helped hook them up.

Q. At the time that these horses were delivered there in the morning by Mr. Thun, state what, if anything, Mr. Thun said to you, or in your presence, in regard to the horses?

A. Well, all that I heard him say was, he drove the team in there, and he said, "Is this the place where they want this team?" And I believe Mr. Cooper says, "Yes, we have been waiting for the team." It was about half-past seven o'clock then; we had been waiting for the team from seven o'clock on, because

(Testimony of Alexander McKinnon.)

I was waiting to get out of the brewery and I could not get out before this team was hooked up and gone before I could get my work started.

Q. At that time was anything said to you, or in your presence, as to the character of the horses?

A. No, sir.

(Witness continuing.) I was on the premises in the afternoon when Mr. Thun came again for the horses; at the time he came up Mr. Cooper and I were doctoring a lame horse's foot in the stable in the front door of the stable; the stable was at the back end of the building and the office was in the front end; I think Thun got around there about five o'clock or some time around there; I did not hear him say anything; he did not talk to me; I never heard him say a word; he did not remain there very long. Walker came out of the office and called me and as I started to go into the office I saw Thun and Mr. Crow sitting on the platform where they load the keg beer; that is the platform like at the entrance of the stable as shown on "Defendant's Exhibit 'A.'" I passed them and went into the office. While Walker and I were talking I heard someone holler "Whoa," and then I [65—33] heard the racket of the horses starting; I ran out the front door and by the time I got out the front door and was half way up they were right across the street, running across Broadway; I crossed the street and the team run right round me; there was a street-car going up toward Twentieth, and the team ran between this car and the sidewalk and I

(Testimony of Alexander McKinnon.)

down the opposite side of the street; they were going too fast for me to catch them. When I got down to the team on Twentieth and Broadway, one of the horses was down; they were on the sidewalk at this time; one of the horses was down and the other was standing up. When I started to unhitch the team one of the lines was tied to a rod around the seat where the check-back is.

Q. (By Mr. MILLER.) State whether or not, at any time, either on the day preceding the date of this accident or in the morning of that day, or the afternoon of that day, Mr. Thun stated to you, or in your presence, anything whatever regarding the character of those horses or either of them?

A. No; that morning when we had the team hooked up, one of the horses had a halter on, and Mr. Crow says to Mr. Thun, "What is this, a colt? Is he mean or anything?" And he says, "No, no, they're all right; he is just a little foolish about the head."

To the COURT.—I never noticed Mr. Crow at the time when I ran out after the team; I did not notice whether he was on the wagon when it passed the window.

#### Cross-examination.

To Mr. MOORE.—The team went through the door and they swung towards Twentieth Street past the office and I ran over across the street and I got right near the team, right near these horses, and it was slippery around there, and they just moved that way to the right a little bit and then swung around



(Testimony of Alexander McKinnon.)

to me. If I had caught [66—34] the horse I would have gone right under it. The horses were just going off from the sidewalk and onto the street when I first got outside the door of the office; the wagon was just going on to the street and the team was about half way between the car-track and the curb, as near as I can tell; I ran out into the street; I ran across the street, very near across it; I went clear across the tracks; I got very close to the horse that was on my side, close enough to grab it; the wagon passed me, and that is a slippery street and I was making a get-away to keep out of the way so as not to get hit with the wagon myself; the wheels of the wagon passed very close to me, maybe two or three feet away; it is a pretty heavy wagon, I should say it weighs a ton and a half; I have never seen the wagon weighed, but it is what is called a two-ton wagon; the team were not what you would call a light team; the horse that was killed, I should judge, would weigh along in the neighborhood of 1200 lbs.; the wagon was not one of those big, heavy wagons that they haul beer barrels with; it is a bottle-beer wagon, a case wagon. I did not notice the wheels at all and could not say whether they were locked; I could not say whether the horses could have dragged the wagon away as rapidly as they did if the wheels had been blocked or locked. I could probably have noticed if the wheels were skidding; I could not say for certain whether they were or not, because I don't remember noticing the wagon; when the wagon got out into the street, it went at a pretty lively rate;

(Testimony of Alexander McKinnon.)

they gained on me as they ran down the street. I am a stable-man, with the exception of the Redwood Canyon and Lafayette work. I am the only one there who can drive four horses. The duties of the stable-man are to feed and water and clean the horses and harness them; no one assists [67—35] me, with the exception of the keg driver, and he harnesses his own team; the drivers hook the horses up; the horses are generally turned over to the drivers right there in the driveway where this other team was hooked up, where this team was standing, and then the driver hooks them up to the wagon. The drivers appear about seven o'clock in the morning and take [68—35½] the teams and hook them up; I have the teams harnessed and ready for them; they generally get back to the stable about five o'clock, and when they get back they unhitch their team and turn them into the stable and take the harness off; that is a part of their duty. My hours are from six A. M. until seven P. M. I was off on the wagon on the day of the accident and got there a little earlier; Mr. Cooper was in charge of the stable that day; I would have been home by six o'clock if it had not been for this trouble with this team; I stayed there after the trouble with the team until things were straightened up. The reason I had to wait for Mr. Thun to come with his team on the morning of May 29th was that I had not loaded my wagon and I had to load it and I could not get in there with a four-horse wagon to load until this

(Testimony of Alexander McKinnon.)

wagon was out of the way. Mr. Crow had been working there before that day, but that morning he came there to work on account of my going to Lafayette and was an extra man; he did not work there the previous day, according to my recollection he did not work there for about three weeks before; on this occasion he was there several days, but I could not say just how many; during the time he was there he hooked his own team and unhooked it, just the same as the other drivers; I am sure he worked there after the accident; he has worked there two or three times for one day since the accident; when they needed an extra man they called on him; he was not there the day after the accident; I could not say how long after the accident it was that he was not employed, but it was not several months. I know there was a halter on one of those horses; Mr. Thun did not say anything to Crow about keeping it on, but there was some conversation between Thun and Crow about that halter; it is not a fact that Thun mentioned the halter to Crow, and he did not say to Crow that the horse should be tied; the [69—36] bridle was over the halter; it is not at all a usual thing to leave a halter on a horse with a bridle on it, unless there is something wrong with the horse; there was no rope to that halter at all; it was on the horse that was killed; when horses are left there there is not any custom about tying them or hitching them up, except setting the brake and checking them back; it is the custom always that the driver when he stops his team sets the brakes; you set these brakes



(Testimony of Alexander McKinnon.)

by a ratchet proposition, you shove the brake on and shove it into a saw-tooth like arrangement, and it holds there; the reins are customarily hooked up on the seat and they pull the team back and check them back so that the horses are loose on the tugs; they are hitched back by a check-back rein on the line; on all of our own horses we have a loop on the line that is buckled right on to the line with a ring in it and that is just the right length so you do not have to stop and tie up the line but back the team right up and hook the line on to the hitch-back; that is located at the right length so that the lines themselves keep the horses loose in the traces; if there is not one of these hitch-backs, we tie the reins into the hitch-back hook there. When I went to unhitch the team from the wagon after the accident, I found one line tied around the seats; there is a rod runs around the back of the seat; that is the same rod they hook to if there is this arrangement on. The other line was dragging. On the day of this accident, Mr. Cooper was acting as stable-man and I drove four horses over the hills into Contra Costa County; Cooper worked in the stable for a week; he had a lame foot; he worked in the stable for a week and I worked as extra man for the following week.

Q. (By Mr. MOORE.) Who were the drivers who went out with the teams on the day following this accident? [70—37]

A. Mr. Reardon, Mr. Goodell, Mr. Gablesen, and, as I come to remember it now, Mr. Crow drove this same team the next day. [71—37½]

(Testimony of Alexander McKinnon.)

The COURT.—Which same team?

A. The same wagon that the runaway was on; I stated before that that he did not work the next day, but, as I come to remember it, he did work the next day.

(Witness continuing.) I believe he continued to work for a week, during the week that Cooper was in the stable.

Q. (By Mr. MOORE.) Your recollection is that he continued to work there until Thursday of the following week?

A. Until Thursday of the following week.

Q. Is your recollection at all clear on that?

A. It is quite clear; I know that he worked there several days when Cooper was in the stable.

Q. Have you talked with anybody here during the intermission about your testimony?

A. About my testimony?

Q. Yes; about what you knew about the case and whether Mr. Crow continued to work there or not?

A. Only among ourselves.

Q. Who do you mean by “ourselves”?

A. Mr. Crow, Mr. Cooper and myself.

[Testimony of H. M. Cooper, for Defendant.]

H. M. COOPER was then called as a witness on behalf of the defendant and, upon being first duly sworn, testified as follows:

To Mr. RIX.—I now am and, on the 29th day of May, 1914, was employed by the San Francisco Breweries, Limited; I am a driver; at that time I had

(Testimony of H. M. Cooper.)

charge of the stable; on the morning of May 29th, 1914, I saw Mr. Thun; he brought the horses to the stable; he drove the horses in not hitched up to the rig, but he drove the horses in by the line; he came in by the back entrance; that is a different entrance from the one where the horses were fastened when they got away, that is, he came in the entrance nearest to [72—38] Nineteenth Street; it was about 7:25 when he came in in the morning; we showed where the wagon was and he drove them up to the wagon and we put the pole in; he stayed in front of them while we started to hitch them up; the wagon was in the driveway nearest to Twentieth Street; I asked him about the team when he brought them in, if they were all right, because I seen a halter on one of the horses, and I asked him what the halter was on there for, and he said one of the horses was a little bit skittish about the head but that he was all right; I told the driver not to take any chances with him but to put the chain on when he went out for anything; I seen the horse had a bad eye, that is the reason I said about not taking any chances with the horse, to tie them up, to tie the reins back; I am a driver, but I had charge of the stable then; Mr. McKinnon is the regular stableman. When Thun brought in the horses I helped hitch them up; Mr. Thun and Crow helped hitch them up; Thun was most of the time standing at their heads. About half-past four Mr. Crow drove in from his route after his day's work was through; he came in the same way and drove around facing this way, that is,



(Testimony of H. M. Cooper.)

through the entrance nearest to Nineteenth Street, and drove around to the same dock or platform facing Broadway nearest to Twentieth Street, close to the office. There the team was tied up, that is, the reins were tied back and the brake was put on; I went to the office to see when Mr. Thun was coming after the team and they said they had not heard from him yet and it was about 5:30 when they told me that he had telephoned up that he would be up in a few minutes; he came there about half-past five; I saw him when he came in; he came through the back entrance nearest Nineteenth Street and walked right back to the stable opposite to the entrance nearest to Twentieth Street; he stood there for a few minutes watching us [73—39] treating a horse and then sat down on the platform where they load keg beer, that is, the dock right close to the door of the barn; he stayed there maybe five, six or seven minutes with Mr. Crow, and in the meantime I was attending to the horse that was being treated and the team was standing over near the office hitched to the wagon; it was probably six or seven minutes when Mr. Thun said, "I guess I'll unhitch and go home." Mr. Crow said, "Well, to show you I am a good fellow, I'll help you unhitch." Mr. Thun started out and Mr. Crow started to follow him out. So, the next thing I seen, I was still standing holding this horse, and the next thing was when I heard them holler, "Whoa," and I looked around and Mr. Crow was reaching for the line and Mr. Thun was standing on the left-hand side, the side next to the building, next to the bay horse.

(Testimony of H. M. Cooper.)

I saw the team after they were brought back from out on the road; they were tied back, the reins were tied back to the seat and the brake was on; they were tied so that the traces were loose.

Cross-examination.

To Mr. MOORE.—I had been acting as stable-man for about a week altogether; I think I ceased to act as stable-man on the next Monday after the accident; at that time there were four drivers, Mr. Reardon and Mr. Crow were extra drivers; there were two extra drivers beside the regular ones; I think the accident happened on Friday and that Mr. Crow continued to work as an extra driver after the accident until the Monday or Tuesday following; I know he was there three or four days after the accident. He had worked on previous occasions as an extra driver. He knew what the duties of a driver were. When acting as stable-man I took care of the horses, fed them and cleaned them and put the harness on them and then turned them over to the drivers and they took [74—40] them and hooked them into the wagon and at night they unhooked them. I do not know whether I was helping doctoring this horse or not when Crow drove into the barn upon his return on the day of the accident; up to the time of the runaway we might have been doctoring this horse fifteen or twenty minutes, and then we had to fix him up after the runaway because I turned him loose and went to catch this team.

The COURT.—Were you there helping to fix him up all the time?      A. Yes, sir.

(Testimony of H. M. Cooper.)

Q. How did you happen to be in front to see this wagon with the reins tied up on the brake?

A. Because I seen him when he came in.

Q. How far is that place where he stopped them and put the brakes on from where you were?

A. I think it is about fifty feet or sixty feet, about as far from here as to the back end of the room here.

To Mr. MOORE.—When the horse was being treated I was back in the stable door; Mr. McKinnon got back from his Contra Costa trip about four o'clock, and shortly after he got back he commenced doctoring this horse; I do not know whether I was in the stable or in the bottling-room when Crow came back, but I seen the lines tied after he drove in there anyway. When I first noticed the team in motion, Mr. Crow was just stepping up grabbing—reaching for the lines, stepping on to the step of the wagon; it was all done so quick I do not know whether his feet were touching the step or not, but he did have it afterwards, because he got the line and I seen him dragged on to the sidewalk. When he went out on the sidewalk he was on his back dragging.

Q. (By Mr. MOORE.) Now, let me see if we understand it correctly, and if we do not we will correct it. When you had seen the [75—41] wagon before the team started up, the reins were hitched back and tied in the back of the seat to the extent that the traces became loose; is that right?

A. Yes, sir. [76—41½]

Q. So that, if the team should then start up, they would be compelled to pull the weight of the wagon



(Testimony of H. M. Cooper.)

upon their bits; is that correct?      A. Yes, sir.

Q. And, at that time, the brake was locked, was it?

A. Yes, sir, the brake was on.

Q. When you saw them proceeding out of the barn door, or the premises there, Mr. Crow was being dragged along the floor holding fast to one of these reins, was he?

A. I told you at the first jump of the horses, no, he was reaching for the line; the last time, before he got to the edge of the sidewalk he was being dragged.

Q. At the time that the rig passed out of the door the brake was on, was it?      A. It was.

Q. The wheels were locked?

A. The brake was on.

Q. Were the wheels locked?

A. I was not looking at the wheels at that time.

Q. You were back toward the rear of the building, were you not?      A. Yes, sir.

Q. Could you help seeing the wheels?

A. Yes, sir; there are a lot of times you don't see things like that; maybe you can't see them, maybe you don't think about seeing them.

(Witness continuing.) I could not say when the team was going out of the door whether the wheels were dragging or not; I did not notice that, but I noticed that Crow was being dragged; he was dragging right close to the wheels of the wagon as he held fast to his one rein.

Q. (By the COURT.) Did you notice whether the team was pulled around by the rein that he had hold of?

(Testimony of H. M. Cooper.)

A. In a way, yes, they were pulled a little bit; but he [77—42] let loose when he got to the sidewalk.

(Witness continuing.) He had hold of the right-hand side of the wagon, the right-hand rein, and that pulled the team around a little bit.

Q. (By Mr. MOORE.) They took a kind of corkscrew, did they?

A. They did; they started down the street.

The COURT.—Would not the other rein continue to pull them in a circle? A. It did, in a way.

Q. I thought they went down the street?

A. Yes, but they made a big circle.

Q. (By Mr. MOORE.) Here is the doorway, we will say, leading from the station out on to the road; Mr. Crow was being dragged by the right rein, was he? A. Yes, sir.

Q. You could see that? A. Yes, sir.

Q. How could you tell that it was the right-hand rein from your position?

A. Because he was dragging on to that rein.

Q. How do you know which rein it was?

A. He might have had either one; you could see when he was over the horse which one it was.

Q. You were in a position to see that, were you?

A. I was.

Q. And that kind of dragged the team around while he had hold of it?

A. While he had hold of it, yes.

Q. And so, when they went out, how much did they miss the edge of the doorway by on the right-hand side, how much did the wagon clear that by?

(Testimony of H. M. Cooper.)

A. It did not clear it very much.

(Witness continuing.) Mr. Crow did not have any more than room enough to get out of there, he just cleared it by the width of his body between the wheels and the edge of the doorway; at [78—43] that time the team were not exactly headed down Broadway, the other line was pulling, I guess, a little bit the harder; they got swung around on the side where Crow was dragging by his weight; they had been sort of turned by Crow dragging the right line, and that pulled them off not exactly straight across the street; it was a little bit south on Broadway, they were slanting a little down Broadway, that is, in the direction of Fourteenth Street, and when Mr. Crow let go they turned on Broadway, because the other line was pulling them around. I am not a judge as to the weight of horses, but these horses were about the size of those usually driven; they would go 1250 lbs., I think; but I am telling you I am not a judge of the weight of horses; I think the weight of the wagon would be about twelve hundred pounds; it has a steel bed, but it is not solid; I think it would go over a ton. The brake was a ratchet brake that you could set in the teeth causing the wheels to lock; the horses when they run away were going faster than I could run. If they were not ahead of me and I had nothing the matter of either of my feet, they were running faster than I could run. Some drivers have reins buckled at the ends and some have not; there is no rule as to that; these reins were tied back to the seat; there was a rail on the back of the seat



(Testimony of H. M. Cooper.)

and they were tied to that; I observed closely enough to see that. I was in the bottling-shop at the time I saw them tied; we were inside the bottling-shop; after we were working on the horse we were all inside of the shop for, maybe, four or five minutes, Al and I and Harry Cooper we went in there for a little drink.

Q. (By Mr. MOORE.) There is another thing, Mr. Cooper; you said that, observing the bad eye of this horse when it was brought in in the morning, you told Crow to be sure when taking him out to [79—44] put the chain on; what did you have reference to?

A. There is a chain on the front of the wagon that hooks into the front wheel; there is the brake and the chain too.

Q. Was the chain put on, do you know?

A. Out on the road, do you mean?

Q. I mean the team was left here unhitched other than the lines being tied back; that is, they were not tied to a post or anything adjacent?

A. I could not see in there whether the chain was on or not; I had seen the lines tied back and I know the brake was on, I saw the brake was on, I did not notice the chain.

Q. This horse was not tied by a rope from the halter, was it?

A. He was not, he had no rope on the halter at all.

Q. These chains that you speak of reach over the front axle, there is a little chain that hangs from the body of the wagon and that you can hook into the

(Testimony of H. M. Cooper.)

spokes of the wheel, is there not?

A. Yes, sir, it locks the front wheel.

Q. When you went up there to get a little drink, you passed to the left of this wagon, did you not (indicating right and left in the direction in which the wagon was facing)? The left of the wagon?

A. Yes, sir.

Q. Where was it you saw the brake? Was it the block of the brake as it rested against the rim of the wheel? A. The brake was on full.

Q. How did you see that? Did you see it by looking at the staff of the brake or did you see it by looking at the block of the brake?

A. I guess you call it the staff.

Q. Where the man puts his foot? A. Yes, sir.

Q. That was over on the right side of the wagon, wasn't it? [80—45] A. Yes.

Q. Then, how were you able to see that?

A. Because I leaned over the door and looked over the foot-board of the wagon and seen it and looked at the lines.

Q. (By the COURT.) How did you come to do that?

A. Because I looked to see if the lines were tied.

Q. (By Mr. MOORE.) And you could not see the staff of the brake as you walked down there into the bottling-shop unless you leaned over?

A. Not exactly leaned over, no, I didn't exactly have to lean over to see it, because it was not far enough past the doorway of the dock or platform there.

(Testimony of H. M. Cooper.)

Q. There is a kind of structure on one of these wagons, is there not, a kind of framework where the curtains set in?     A. Yes.

Q. It is so that you cannot see through, it is a solid construction, is it not?     A. Yes.

Q. The staff of the brake does not stand up very high, does it, on one of these wagons?

A. It stands up past the foot-board.

Q. Yes, I know that, but does it come up to the level of the seat, the top of the seat?     A. No, sir.

Q. (By the COURT.) It is one of those foot-brakes on the side, is it not?

A. It is on the side of the wagon, it stands up high enough above the foot-board, even if you are on the other side you can see whether it is on full.

Q. (By Mr. MOORE.) You did not go up to the front wheel of the wagon, did you, in going into the bottling-shop, when you went into the bottling-shop did you go up as far as the back wheel of the wagon itself?     A. Almost up there. [81—46]

Q. Where was the hind wheel of the wagon standing with respect to the door, ahead of that bottling-works?

A. It was standing not quite past the back of the doorway; I cannot explain it here, I can show it on there though (referring to "Defendant's Exhibit A").

Q. (By Mr. MILLER.) Show it on here?

A. Standing here (pointing to the back end of the platform nearest to Broadway in the driveway), when I looked out of this doorway here (referring



(Testimony of H. M. Cooper.)

to doorway from the platform into the building), the front wheel was a little past that and I would not even have to lean up there to look over there, I could almost see the front of the wagon; the hind wheel was a little bit back here, it was a little past the platform.

Q. (By the COURT.) Why did you suggest then that you did lean over to look at it?

A. Because naturally you would lean against the side; I did not exactly have to lean over to see it, it was just like that, I leaned over like that.

Q. What had made you doubtful as to whether the team was tied or not?

A. I don't know; I just simply looked over there.

Q. Crow was a man who was safe as a driver, wasn't he?

A. Yes, sir; but I don't think there is any place where there are drivers, but one will always take a look at another fellow's team or something like that.

(Witness continuing.) The team may have been standing there five minutes when we went up to take a drink, the lines were tied to the side on the iron; there was a rail to this seat and the lines were tied to the rail; there was no hold-back on these [82—47] lines, Mr. Thun did not have a hold-back on his lines; there was on the back of the seat an iron hook to fasten to when there are rings on the line, but that hook is not big enough to tie the lines to. The hind wheels were back further than this platform No. 1 from the rear edge of the door; this is the way the gangway runs in here; the wheels were just a little

(Testimony of H. M. Cooper.)

bit back of it, they might have reached back a foot or a foot and a half back of the doorway; from the first door to the second door is a distance sufficient to drive a team in, I should say about fourteen or sixteen feet; it was by this rear doorway that I walked into the bottling-room on each occasion.

Redirect Examination.

To Mr. RIX.—I know it was the right line that was loose, because I could see on the side of the horse that Mr. Crow was hanging on to, you could tell that was the right line; also I saw when we helped unhitch the horse up at the corner, and the left line was tied back to the seat, to the rod which was on the seat, and the brake was still full on.

Recross-examination.

To Mr. MOORE.—We had to release the brakes to pull the wagon away from the horses at the time to get them loose from the wagon; this horse was down; this team was not unhitched when Crow brought it in because we were expecting Thun to come and get it; I have never seen horses hired there before; there were no other occasions prior to this that I know of where we used hired horses. At that time of day you are speaking about, if they unhitched the horses, there was no room in the stable, and there was no place to tie them up.

**[Testimony of Harry Crow, for Defendant.]**

HARRY CROW was then called as a witness on behalf of the defendant and, on being first duly sworn, testified as follows: [83—48]

To Mr. MILLER.—My name is Harry Crow and at the present time I am driving a big automobile truck. On the 29th day of May, [84—48½] 1914, I was in the employ of the San Francisco Breweries as a driver of a bottling-wagon and two horses; I remember the accident that occurred at the premises of the brewery, on the west side of Broadway between Nineteenth and Twentieth Streets about 5:30 o'clock in the afternoon of May 29th, 1914; I was working as a driver for the brewery on that date; I was an extra driver for the brewery and had worked, I think, about a week at that time, and then before that, maybe, a few days at a time when they would call me. I continued in their employ for three or four days, I guess, after the accident; I drove the team that caused the accident; I was present at the brewery on the morning of the 29th day of May, 1914, when the team of horses which I drove on that day were brought there; a man by the name of Thun brought them, I think, about 7:15 or somewhere near that in the morning; these horses were driven into the brewery premises by Thun, on the south driveway; they were harnessed when he brought them; I asked him if the horses were wild in any way, and he said no, they are free drivers, one of them is a free driver; Thun, I think, stayed there while Cooper, McKinnon and myself hitched up the horses, but I



(Testimony of Harry Crow.)

am not sure of that. I got back to the brewery after the day's work about four o'clock in the afternoon; when I got back there there was no further route for me to drive over during the day; I drove into the place where we always unload our empties and unloaded all of the empties and went in to cash in with Mr. Walker; I went out and asked the stable-man, Shall I unhitch them, and he said, "No, they have already telephoned us that the gentleman was coming after his team." I put them at the platform where we always load up at the same place that we drive them in, and left them standing there; that was the platform nearest Broadway. [85—49]

Q. (By Mr. MILLER.) Now, Mr. Crow, here is a diagram of the premises of the Brewery (pointing to "Defendant's Exhibit 'A'"), the lower portion of it is Broadway; the line where my pointer is is what they call the South Drive (pointing to the drive nearest to Nineteenth Street), and the other one (pointing to the one nearest Twentieth Street) is the North Drive; where I am pointing to now (pointing to the North Drive) is the platform nearest Broadway? A. Yes.

Q. Then the one behind it still farther back near the stable, and still farther back of that the stable; now, point out on this map (referring to Defendant's Exhibit "A") where it was that you left the horses and wagon standing? A. Right here.

Q. Now, then, you are pointing to the platform there on the north side of the north drive into the

(Testimony of Harry Crow.)

premises of the defendant and the one nearest Broadway?      A. Yes.

(Witness continuing:) When I stopped the wagon and the horses there I put on the brake and tied the lines up; there were no rings on the lines; when I drove into the brewery I set my brakes and there were no rings on the lines, and there is a rail on the back of the seat; I just tied a loop right there with the lines, like you would tie a bow knot and put the lines through and pulled them through like this (illustrating); the brakes were set, the lines were pulled back about the same as the rings would set them, pretty tight; I was on the premises when Mr. Thun came after his horses; I was sitting on the platform next to the ice-house over where they keep the keg of beer; it is just this side of the stable; the platform I refer to is the one on the diagram (“Defendant’s Exhibit ‘A’”) shown as adjoining the stable; it is designated on the diagram as “Loading Platform”; I was there alone until Mr. Thun came in; he came up and sat down [36—50] on the platform alongside of me; Cooper and McKinnon were working on the horse that had a nail in its foot, they were right at the doorway of the barn or stable; when Thun came up he said something about his team, and Cooper said “They are waiting in the driveway,” or something to that effect; Thun and I talked possibly five minutes, and then he said, “All right, I will take my team.” I said “All right, I have been driving them all day and I will come and help you unhitch

(Testimony of Harry Crow.)

them.” He then started off ahead of me toward the team and I followed up behind him; he possibly was three paces ahead of me; he went on the left-hand side of the wagon and I went on the right-hand side and he walked from this platform and I went on the right; there is no platform there, just a gangway there, and all at once the horses started to go, and I made a jump on the step and grabbed for the lines and I caught one line, and they dragged me through the doorway; I suppose I went through a space of about two feet there and they dragged me on to the curb and I had to let go, I had only one line; I could not tell where Thun was at that time; he was on the other side of the wagon and I could not tell; just as I got to the step there was something started them; then I made a grab for the lines and jumped on the step to get hold of the line; the brake was still on and the lines were still fast; I got only one line; I hung on to the line to the curb, about fifty feet; the horses were right at the curb, right on Broadway there, when I dropped the lines. The reason I dropped it was I could not hold on any longer; they were turning to the left and they would run over me and I had to let go of the lines; they hurt me as it was.

Q. (By the COURT.) When you tied up those lines, how did you say you tied them? [87—51]

A. There is a rail over the back of the seat, do you know, like this, and I just pulled the lines through and put a knot through that.

Q. You put them through together? A. Yes.



(Testimony of Harry Crow.)

Q. You tied them in a single knot?      A. Yes.

Q. How could you get one line through without untying the other?

A. I could not tell you that; I know I only had one line when they were dragging me.

Q. They must have released the other line?

A. I could not tell you, I never went up to the wreck at all.

Q. You were badly hurt?

A. I got pretty badly hurt on the knee and leg.

Q. You did not go up to the wreck?

A. No, I could hardly walk for a few minutes.

Cross-examination.

To Mr. MOORE.—I think I was working about a week before this accident, and about three or four days afterwards; I did not quit work next day.

Q. (By Mr. MOORE.) I will ask you, Mr. Crow, whether or not you had a conversation with Inspector Hodgkins of the Oakland police force on June 6th, 1914, at some brewery over in Alameda; do you recall that?      A. Yes.

Q. Is not it a fact that you then and there stated to Inspector Hutchins, "I worked as a driver for the Wieland Brewery at 931 Broadway for two weeks, worked in the place of Henry Cooper; I quit Saturday, May 30th"?

A. I did not quit; Mr. Cooper went back to work; he was hurt.

Q. You said here also that Cooper returned to work?      A. Yes. [88—52]

(Testimony of Harry Crow.)

Q. Now, did you not state to Inspector Hodgkins at that time and place, "I quit Saturday, May 30th"?

A. I could not tell you if I did; Cooper was working all the time.

Q. He was not working?

A. In the stable, yes.

Q. His usual job was that of a driver, was it not?

A. It was the same route as I had.

Q. But at that time he was laying off on account of some injury to his leg, was he not, and acting as stable-man?

A. I think he only laid off a few days, and then the stable-man gave way to me and he took the extra job, and Mr. Cooper took the stable.

Q. Do you testify that you did not tell Mr. Hodgkins back on June 6th, just a week after this occurrence, that you quit Saturday, May 30th?

A. That I quit?

Q. Yes.      A. I didn't quit.

The COURT.—He is asking you if you did not tell Mr. Hodgkins as he asks you there, as he put it there, didn't you tell Mr. Hodgkins that you quit on May 30th?

A. I don't think so, because I did not quit.

(Witness continuing:) When the team was brought in there that morning, Cooper told me that, as this is a strange team I had better chain the wagon; I asked Mr. Thun if the horses were all right, and he said that one horse was a little bit

(Testimony of Harry Crow.)

bad about his head or something; he said one of them was a free horse; he referred to the one on the left-hand side, it had a halter on it.

Q. Had you noticed during the day that that horse was unusually free?

A. Yes, up until possibly I had reached Elmhurst; after [89—53] that he was quiet.

Q. Did you ever state that you knew that horse was a free horse and that, in fact, he had several times during the day tried to run away from you?

A. Only in the morning he was; he may not have tried it, but it appeared that way to me; he was a good free horse, he was right on the bit all the time.

Q. Did you tell Mr. Thun that night, when he came in there, that the horse was a good free horse and had been on the bit all day?

A. I could not tell you whether I did or not.

Q. Is not it a fact that you told him they were a good team and had been on the bit all day?

A. I don't remember if I did.

Q. Do you remember his asking you how you got along with the team? A. I do not.

Q. Is not it a fact that you stated to Inspector Hodgkins that the left horse of the team was a bad horse?

A. After he had run away I might have, yes.

Q. Did not you say to him further, he tried several times during the day to run away?

A. In the morning I do not know if he tried to run away, but, as I said before, he was a good free



(Testimony of Harry Crow.)

horse, he would have gone if you had let him go.

Q. Whether he was a good free horse or not, did you make the statement to the inspector on June 6th that he was a bad horse and that he tried several times during the day to run away?

A. I may have made that statement, yes, up till that time in the morning.

(Witness continuing:) I cannot say for sure, I should say the horse was about eight or ten years old; I don't know about [90—54] age; he was a good lively horse; I am not a judge of the age of horses; I am a driver; he was a freer horse than the other horse; when going on my rounds I use the chain because it was a strange team; we were supposed to use a chain any how in town; we never did use the chain in the stable, we just left them in the gangway.

Q. Do you testify that this team started up before you reached up on the wagon at all?

A. Just as we got about the front of the wagon something started them and I made a grab for the lines.

(Witness continuing:) They made a jump right there; I was not on the wagon when the horses started to run away; I was walking up to the step, I just got to the step; there is a step on the front of these bottling-wagons on each side, and I had just got up to the front and I was going to unhitch the traces on this side when the horses started, and of course, I put my foot on the step and made a

(Testimony of Harry Crow.)

grab for the lines on the right-hand side of the wagon; I was going to help unhitch.

Q. Is it customary to unhitch the traces before you unfasten the hitch-back where they are tied back with the reins?

A. I don't know as it is, no.

Q. Don't you know that where horses are hitched that way, if they were horses you were to be careful about, that you would unhitch them on the tug before you unfasten them from the bit?

A. You have to unhitch the tugs first.

Q. Why did you have to unhitch the tugs first?

A. You would not want to take the lines down first.

(Witness continuing:) I had just got up to the front end of the wagon and made a grab for the lines; I could not see Thun at all, he was on the other side of the wagon.

Q. Now, you were a witness, were you not, in Judge Brown's [91—55] Court over in Alameda County? A. Yes.

Q. On Mr. Thun's case? A. Yes.

Q. I want to ask you, on that occasion, whether these questions were asked of you and these answers given by you: "Q. Is it customary for you to unhitch the team before you untie the lines?

A. Not when the man tells you to leave them stay there.

Q. What was your purpose in getting up on the step? A. I merely said I will help you unhitch the horses.

Q. You started to untie the lines at

(Testimony of Harry Crow.)

that time? A. Certainly, I was stepping up. Q.

You were going to untie the lines? A. Yes, sir.

Q. As a teamster you know you should not untie the lines? A. I should say not; what should you

do? Leave the lines where you could not get at

them? Q. Then you would unhitch the team by

untying the lines first? A. Certainly; get them

where you could get at them.” Were those ques-

tions asked of you, Mr. Crow, and those answers

made by you on that occasion?

A. I guess they were.

Q. Well, now, what is your testimony in regard

to that in the unhitching of a team where they are

tied back; should you unhitch the tugs first or un-

fasten the lines where they are tied in?

A. I should think it would be according to the

team; now, usually when we go in the brewery with

the horses that we have over there, the lines have

all got rings on them and you take the rings on the

lines and throw them off and get down and unhitch.

Q. I want to ask you if, on that occasion, at that

same trial over there, Judge Brown did not ask

you this question: “Q. Don’t you, when you leave

the horses standing, don’t you tie them? A. Not

in the brewery.” Do you recall his asking you

that question and you making that answer? [92—

56]

A. It is according to what you mean by tying.

Q. What do you mean?

A. You know there is rings on the lines and there



(Testimony of Harry Crow.)

is a hook on the back part of the seat, and we always pull up the lines and hook the rings over.

Q. Then, when you said you did not tie them in the brewery, you did not mean to be understood as saying that you did not hitch them back?

A. We always hitch them back; you might call that tying.

Q. The way you answered Judge Brown, you had in mind tying them to a post or something of that kind, hitching them to a post?

A. But not in the brewery, we never hitch them in that way; not on the street either.

Q. Don't you call that tying, when you hitch them back?

A. Possibly it is called tying; it is hitching back.

(Witness continuing:) What we call tying and what you call tying may be two different things; we do not tie them by the neck or a rope, we check our lines back. I was working for the Wieland for three or four days after the accident; I think I worked at the Tacoma during the latter part of the next week; I was stopping at my home then; I don't remember making any statement in the presence of Mr. Thun and the other men there.

Q. Don't you remember that they did ask you how it happened, and you stated that, in untying the lines you had dropped one of the lines and it had fallen on the fetlock of one of the horses?

A. No.

Q. Do you say that you did not say at that time

(Testimony of Harry Crow.)

and place that you had dropped one of the lines?

A. I don't think I did state that at all.

Q. Do you say positively, Mr. Crow, that you did not make that [93—57] statement within twenty minutes after the team got away, that you had dropped one of the lines?

A. No, I never made any statement like that.

Q. Is not it a fact that you had both of these lines in your hand before the team ever started up at all?

A. No, I made a grab for the lines and I grabbed one line.

(Witness continuing:) When I pulled at the lines I may have had them both, but when they pulled me through the door I only had one, I could not tell whether I had both in my hand before they started; I know I had one line when they pulled me through the door.

Q. Don't you know whether you had both of these lines and whether you dropped one or not, so that you only had one at the time you got to the door?      A. No.

Q. Do you mean to say that you don't know now whether you had both of those lines to begin with?

A. I may have had both of them, but both of them did not come untied when I pulled at them.

Q. Did not you state in the conversation that you had with Mr. Hodgkins on June 6th, over at the trial in Alameda County: "I went to the right side of the team, I stepped up and got the lines from where they were attached to the seat; just then the team started to run; I don't know what started

(Testimony of Harry Crow.)

them, they dragged me across the sidewalk; I hurt my leg''?

A. Mr. Hodgkins may have misunderstood me on that over there.

Q. Without regard to that, Mr. Crow, the question is, didn't you state to him: "I told him" (referring to Mr. Thun) "I would assist him to unhitch; he went to the left of the left horse, I went to the right side of the team; I stepped up and got the [94—58] lines from where they were attached to the seat; just then the team started to run; I don't know what started them, they dragged me across the sidewalk."

Q. Did you make that statement to him?

A. I could not tell you, as I told you before; it was when the team started to run that I made a grab for the lines.

Q. If you did tell him that, would it have been a fact?

A. No, the horses were started when I made a grab, when I stepped upon the step and made a grab for the lines; Mr. Hodgkins may have misunderstood me on that, on the statement in that respect.

(Witness continuing:) I tied these reins in there at the rim of the seat by means of a loop; I pulled them right around and pulled the loop into it; they were extraordinarily long reins; they were hanging down and I made a grab for them and caught the underneath part; they were long reins; they belonged to Thun; they came with the harness,



(Testimony of Harry Crow.)

they are not the Brewery harness; the part of them I caught must have been the part after the knot; I could not have pulled the line out if I didn't; the lines were two or three feet longer than our lines; the lines that extended back from the horses to the rail were not hanging slack; it was the end of the lines after the knot that was tied; I must have caught one of those ends; I could not tell how the line became untied.

Q. When you were standing on the board, what caused you to fall off of the footboard?

A. When I fell off the step?

Q. Yes.

A. I jumped; the horses were then pretty nearly out of the door; I ran along about two steps before I got on the step.

(Witness continuing:) The horses started to jump; as soon [95—59] as they started I made a grab for them; I do not know whether I jumped up while the wagon was on the go; the horses were, maybe, stamping around and I just made a grab for them; the horses were stamping around, and as soon as they started to go I made a grab for the step, and that is what hurt my leg; they had started and they were stepping around; they threw me off of the footboard; I could not tell you how I was thrown off, I guess I must have jumped; when I seen they were going to try and get away, what I wanted to do was to pull them in the side of the brewery, to jerk the horses and get them into the side of the brewery before they started; I know it

(Testimony of Harry Crow.)

hurt me pretty bad; I could not tell you just what I did in the excitement and everything; the line I had was the one on the grey horse, that would be the right-hand horse, I think it was that line, I could not tell you to be sure which line it was; it was on the grey horse, that would be the off horse, I was going to pull them in to the south side or right-hand side; I was dragged very nearly to the curb; I could not tell you, to be truthful, which line I had, because any line was good to me so I could get them into the brewery one way or the other, I did not care; after they got out of the door they turned north on Broadway; that would be up Broadway; they went straight out of the door; I was trying to stop the team and when they turned up Broadway they pretty near threw me between the two wheels, and I had to let go of them or the wheels would have gone over me; after they got to the curb they turned; I got back to the brewery somewhere about four o'clock and had been around about an hour, I guess, before the team ran away.

Q. (By a JUROR.) Will not your Honor allow me to ask one question? I would like to know as to the reins; there is a buckle that usually hitches the reins together; had you been driving all [96—60] day with these reins loose?

A. There is no buckle on these; they were loose all day, I had been driving with them loose; there is usually a buckle around the rail and then a ring on it that goes into a hook on the back part of the seat.

(Testimony of Harry Crow.)

Q. (By Mr. MOORE.) Why did you wait around there if your work was through? Why did you wait around there from the time you got in with your team about four o'clock until a quarter after or half past five?

A. We usually, when we get in like that, sit around and we will talk to the boys, and I was watching them doctoring this horse that had the nail in its foot; I could have gone home.

(Witness continuing.) I do not think they were doctoring the horse all the time from the time I got there until the team ran away; I could not say just how long I was sitting there watching them, that is, McKinnon and Cooper; I do not think they left the horse while I was sitting there; I did not go any place with them; I was sitting there on the platform; it only takes a second or a minute to put on the stop chains, just to hang them around and hook them up.

Mr. MILLER.—I will now offer in evidence this ordinance of the City of Oakland, it is Section No. 24 of Ordinance 607, New Series, reading as follows: "No horse shall be left untied on any highway in the City of Oakland unless securely hitched by a rope, strap or chain attached to its neck or bridle and to a post or other suitable fastening at the curb, or by a rope, strap or chain attached to its bridle and to a suitable weight of not less than twenty pounds; or, in case of one or two horses being hitched to a wagon fitted with a suitable brake, the horses may be backed, the brake set, and the lines or reins so fastened that [97—61] the wagon cannot be drawn



(Testimony of Harry Crow.)

forward by the horse or horses except by means of the lines or reins."

Mr. MILLER.—That is our case.

The COURT.—You do not claim that a compliance with that ordinance would avoid any possible question about negligence?

Mr. RIX.—Merely, as I understand it, as an indication of doing in the stable as much as you are required to do on the street where there is lots of noise. That is for the jury to consider, as to whether we were negligent in complying with the statute, when we used the same method as is required on the street.

The COURT.—The defendant rests?

Mr. MILLER.—Yes, sir.

**[Testimony of St. Clair Hodgkins, for Plaintiff (in Rebuttal).]**

ST. CLAIR HODGKINS was then called as a witness on behalf of the plaintiff, in rebuttal, and, on being first duly sworn, testified as follows:

I am an Inspector of Police connected with the Police Department in Oakland; I was formerly Chief of Police in Oakland; I had an interview with Harry Crow on the 6th day of June, 1914, on the grounds of the Tacoma Brewery Company across the Estuary on the Alameda side; there were present John S. Duston, Assistant Inspector, Harry Crow, and myself; in answer to questions we asked Mr. Crow he stated that he resided at, I think, 3536 Douglas Street in the Fruitvale district; that he had been employed by the Wieland Brewery Company as a driver for two weeks; that he was driving as a

(Testimony of St. Clair Hodgkins.)

substitute or taking the place of Harry Cooper; that on Friday, May 29th, he had been out on the wagon as a driver during the day and had got back to the Brewery office on Broadway at 4:15 P. M.; that he had turned in the day's receipts and also turned in the team; that the team was standing in the driveway facing east, about thirty feet from the sidewalk; that the [98—62] man who owned the team, it being a hired team from the Washington Stable, had called to get the team; that he, Crow, said to the owner that he would assist him to unhitch the team; that the man from the stable went to the left of the left horse and he, Crow, walked around to the right side of the team; that he, Crow, walked around to the right side of the team and stepped up and got the lines from where they were attached to the seat; that just then the team started; he did not know what started them; they dragged him out of the doorway across the sidewalk; that he hurt his knee and did not follow the team to the scene of the accident; he said that his employment terminated on Saturday, May 30th, the regular driver, Cooper, having returned on that day; that, in substance is the conversation I had with Mr. Crow. Prior to that date, that is, June 6th, I called at the Wieland Brewery in an endeavor to find him but did not find him.

Q. (By Mr. MOORE.) Did Mr. Crow state to you at that time that the team had already started when he made the grab for the lines?

A. He did not.

Q. Did Mr. Crow state to you at that time that he

(Testimony of St. Clair Hodgkins.)

only got one of the lines?      A. He did not.

Cross-examination.

To Mr. MILLER.—This being a street accident, I was detailed on the 4th day of June to investigate in company with Inspector John S. Duston who works with me; with but very few exceptions all hospital cases are investigated by the Oakland Police Department; I had no specific request to see Mr. Crow; I was merely given a detail to investigate the accident and in my judgment considered it necessary to see Mr. Crow who had been mentioned as the driver of the team on the day that the accident occurred; I was detailed to make this investigation by Captain Agnew who was [99—63] Acting Captain of Inspectors in the Oakland Police Department.

**[Testimony of Charles Thun, for Plaintiff (Recalled in Rebuttal).]**

CHARLES THUN was then recalled for the plaintiff, in rebuttal, and testified as follows:

After the accident was over, I went back to the place of the Brewery Company and saw the driver there, and Mr. McKinnon and Mr. Cooper were there; the driver said he dropped one of the lines.

Cross-examination.

To Mr. MILLER.—This was when the wagon was brought back to the brewery; the brewery-man brought the wagon back and I stayed there until they fetched it back; this statement was made right there at the barn; I heard Crow say he dropped one



(Testimony of Charles Thun.)

of the lines; he did not say that to me, that is what he said to the other man; I did not hear him say anything else; they quit talking when I came up.

**[Testimony of Harry M. Cooper, for Defendant (Recalled in Surrebuttal).]**

HARRY M. COOPER was then recalled in surrebuttal by the defendant and testified as follows:

Q. (By Mr. MILLER.) On the day of this accident, after the runaway occurred and the wagon had been brought back to the barn or the stable, did Mr. Crow say, in your presence or hearing, that he had dropped one of the lines on the horse?

A. No, sir.

Cross-examination.

Q. (By Mr. MOORE.) Mr. Cooper, did not I ask you when you were on the witness stand yesterday whether or not there was any discussion or any conversation about how the accident happened on that day and after the accident happened?

A. No, sir.

Q. (By the COURT.) There was not a word said among the people at the stable about the accident at all after it was over?

A. Well, amongst us boys.

Q. That is what he is talking about? [100—64]

A. Well, not exactly, no, because the next morning, not the next morning I did not go out either.

Q. They are not talking about the next morning; they are talking about that day; was not the accident discussed among you at all?      A. No, not that day.

Q. There was no discussion about it at all?

(Testimony of Harry M. Cooper.)

A. The other boys were gone and Mr. McKinnon and I were the only ones that were there after the accident, that is, after the team came back.

Q. Did not Thun come back there?

A. Yes, he took the one horse home; after that Mr. McKinnon and I went out to Eighth Avenue; we did not say anything about it, that is, not much about it going out there.

Q. (By Mr. MOORE.) Was Crow there after the accident and at the time they brought the wagon back to the place, was not Mr. Crow there rubbing his shins?

A. Well, I could not say that he was there rubbing his shins.

Q. Well, then, leave out the rubbing of his shins; he was there, was he not?

A. I did not see him just when we came back, but I seen him afterwards all right sure.

Q. He was still there at the stable?      A. Yes, sir.

**[Testimony of Alexander T. McKinnon, for Defendant (Recalled in Surrebuttal).]**

ALEXANDER T. MCKINNON was then recalled for the defendant in surrebuttal and testified as follows:

Q. (By Mr. MILLER.) On the afternoon that this accident happened and after it happened and when the wagon was brought back to the stable, did Mr. Crow state in your presence or hearing that he dropped one of the lines on the horse?      A. No, sir.

Q. Did he state that at any time? [101—65]

A. Not that I ever heard.

(Testimony of Alexander T. McKinnon.)

Cross-examination.

Q. (By Mr. MOORE.) Was there any talk about the accident, any remark made by Crow as to how the accident happened?

A. Not in my hearing; I was busy at other work.

Q. Mr. Crow was still around the place after you got back with the wagon, was he not?

A. The only thing I heard Mr. Crow say was that he did not know whether his leg was broken or not, he had hurt his leg.

Q. When was that?

A. That was after I came back with the wagon.

Q. Who was present at that time?

A. Cooper and Crow and myself and Mr. Walker, I believe.

Q. (By the COURT.) Nobody thought to ask about how the accident occurred, do you say?

A. Well, we had not time, your Honor, at that time.

Q. You were back there at the stable again, were you not, after bringing the wagon and the horse back?      A. Yes, sir.

Q. Was not something said about the accident?

A. Not in regard to how they started or what started them.

Q. Nobody asked anything about that?

A. Not in my hearing.

Here the case was closed and the testimony for the plaintiff and for the defendant having been fully taken, the Court instructed the jury as follows, to wit:



**[Instructions to the Jury.]**

“Gentlemen of the Jury, I will ask your attention for a few minutes while I submit to you the law that must control you in your consideration of the evidence in this case for the purpose of reaching a verdict. That is a duty that is cast upon the Court by the law. The Court gives the jury the principles that [102—66] must govern them and they are bound to follow those principles; the jury alone pass upon the facts and determine for themselves from the evidence what the facts are upon which they will base their verdict. And I may say at this time in that regard, gentlemen, that with that function of the jury the Court neither desires to nor has any right to interfere; the Court you will observe, frequently throughout the trial asks questions of witnesses; that is its proper liberty, because it is as much the duty of the Court to unite in endeavoring to elicit the facts for the consideration of the jury as it is of counsel; where the Court watches the testimony of a witness closely and sees that there is something that has not been asked of him, it is the duty of the Court, in the interest of the administration of justice to make the inquiry himself. The jury are not to get an idea from anything the Court may have asked of a witness, either from the manner or the substance of the question, that the Court is in any wise interested in what the verdict of this jury shall be, because it sits here absolutely impartial and with no desire one way or the other; and if you have gathered any idea from any-

thing that might have been suggested by the Court throughout the trial that there is any inclination in the mind of the judge as to how the case should go, you must dismiss that from your minds entirely and find the facts from your own consideration of the evidence, because it is neither the desire nor the province of the Court to in any wise influence you in that regard.

“The action is one brought by the plaintiff to recover from the defendant damages for personal injuries alleged to have been suffered by her through the negligence and carelessness of the defendant under the complaint, the substance of which has been stated and read to you, and she alleges, that is, she, in her complaint, [103—67] places the amount of her damages that she has suffered at the sum of \$25,000.

“The answer of the defendant denies the allegations of the complaint in their entire and essential scope so far as they involve the question of negligence; it alleges that whatever injuries plaintiff received were not by or through any carelessness or negligence on the part of the defendant.

“To entitle a plaintiff to recover in a case of this character it is incumbent upon the plaintiff not only to show that she has been injured,—and as to that in this case there is no question, because that is not in controversy, it is conceded that she was injured, and very seriously injured, but where they rely upon the injury as having occurred through the negligence of the defendant and seek to recover upon that ground, then, of course, it becomes necessary for a

plaintiff to show that her injuries did result from such negligence, or of course she cannot recover from the defendant for those injuries. It becomes material, therefore, to inquire what is negligence.

“Negligence is the omission to do something which an ordinarily prudent person under like circumstances would have done or the doing of something which such a person would not have done in the same situation. It is not absolute or intrinsic, that is, not always the same, but always relates to the circumstances of time, place and persons concerned. Negligence as applied to a party in a case like this means the failure to exercise ordinary care. There are some cases which involve the necessity of extreme care. This, under the law, is a case which involves the requirement of ordinary care. Ordinary care is that degree of care which would be observed under like circumstances by an ordinarily prudent person. Bearing this in mind, if you find that [104—68] the team in question was, at the time of the accident, under the control of the defendant, that is, had not been turned over to Thun, the owner, the defendant was bound to exercise ordinary care to prevent it from running away and injuring others upon the street or elsewhere where they had a right to be; and you will understand that the team was under the control of the defendant if it was under the control of one of its servants or agents while acting within the scope of his employment. The omission, if any, to use such care, would constitute negligence.

“A pedestrian has a right to be on the public



street if he exercises due care to avoid injury, and no question is made of the plaintiff's right to be where she was at the time of the accident, nor as to her due precaution to avoid receiving injury.

“If you believe from the evidence, therefore, that the defendant had control of the team of horses, and that while in such control left the team unfastened and unattended upon its premises, and with the gate or door leading to the street open, and that because of being so left unsecured or unattended the team escaped from the premises and ran away upon the street and as a result the plaintiff was injured, then that is a *prima facie* case of negligence upon the part of the defendant.

“Of course, if you find that the defendant was not at the time in control of the team, but that the team had been delivered to the owner, it would not be responsible for its escape, and cannot be held liable for the injury.

“If you find from the evidence that plaintiff was injured as alleged in the complaint through the negligence of the defendant, then it will be your duty to find a verdict in favor of the plaintiff for such damages, not exceeding the sum demanded, as will compensate her for all the injury and suffering proximately caused to her thereby. In estimating such damages, you may [105—69] consider the extent, nature and character of the wounds, hurts, bruises and broken bones, or other injuries she may have received, the extent to which, if at all, the injuries she received are permanent in their character, as well as the physical and mental worry which she

has endured or may suffer in the future because of her injury; the loss, if any, which plaintiff has suffered or will hereafter suffer by reason of abatement of her ability to follow her work or engage in employment as the direct or proximate result of the injuries received. In determining the mental suffering, if any, it is permissible for you to consider the grief, anxiety, worry, mortification and humiliation which plaintiff has and will naturally suffer by reason of her physical injuries, and the resulting impairment of her physical being and energies.

“The law prescribes no exact measure by which such damages can be estimated, but leaves it to the sound discretion of the jury to fix the amount thereof, in such sum as under all the circumstances may by it be deemed just and proper. Nor does the law require that the plaintiff present any direct evidence to show the amount of general damages which she has suffered—and when I use the term “general damages,” I mean damages which she has suffered by reason of the injury and pain which she has been compelled to go through—or the amount of money which would compensate her for the injuries which she has received. All that is necessary for her to show to the jury is the extent of the injuries received and suffering endured, and it is then for the jury to determine, in the manner I have indicated, the amount of damages which ought to be awarded. Included in your award should be the amount of any special damage suffered by the plaintiff in the way of hospital or doctor’s bills for services rendered [106—

70] by reason of the injuries. Special damages must be expressly proven. You will understand that the burden of proof is upon the plaintiff, and to entitle her to recover she must establish her case by a preponderance of the evidence, that is, by evidence that is to some extent in the judgment of the jury of greater weight and more satisfactory and convincing to your minds than is the evidence opposed thereto.

“Now, gentlemen, those are the specific principles that apply to this character of action. There are certain general principles that it is proper for the Court to state to the jury which obtain in any civil action of like character, and they relate to the manner and method of disposing of the issues by the jury.

“As you have observed, this case has practically resolved itself largely into a question of responsibility for this accident; that the accident occurred, there is no question; that the plaintiff was injured, there is no question. The controversy which divides the contending parties is the question as to upon whom rests the responsibility for that accident. That is the main proposition that you are required to solve. There is a further one, which is advanced by the defendant, and that is the question whether, assuming the occurrence of the accident and the injury to the plaintiff, was anyone at fault; in other words, did not the defendant, if you find it to have been in control of the team at the time in question, do all that was required of it to conform to the standard of ordinary care for the protection of the public against the escape of this team. Now, of course, adverting to the last proposition first, if you find that



all that should have been done was done, that is, if you find that the team was still in the possession and under the control of the defendant, [107—71] and that all was done by it which men of ordinary prudence would have felt necessary under all the circumstances to have done, considering the nature of the team—because the question of negligence is always relative to the circumstances, as I have told you,—considering, as I say, the nature of the team, what they knew of its character, what had been divulged to them by their use of it, if you find that they did—and when I say ‘they,’ I mean those connected with the defendant, because the defendant, being a corporation, can only act through its agencies by way of employees,—if you find they did all that they were called upon to do in conforming to the standard of ordinary care, then, of course, notwithstanding the accident and the resulting injury to the plaintiff, she could not recover, because the law does not visit results of that kind upon one who has done all they are called upon to do. So much for that. The pivotal question, though, as I have said, left for the jury’s consideration, is the question of responsibility for this accident. Around that question has arisen the only substantial conflict in the evidence that has arisen in the case—in whose possession was this team at the time this accident occurred, that is, in whose control, because in a case like this possession and control mean the same thing; here was an instance where the defendant had hired this team for the day; it was brought there and delivered to them to be used upon their own vehicle. It was

hitched to that vehicle, and it still remained hitched to that vehicle when the owner came for it. Now, the controversy arises over the question whether the team was delivered to the owner simply by the declaration that there it was ready for him to take, or whether it was the duty of the defendant, through its agents and servants, to unhitch that team and turn it over to the owner for the purpose [108—72] of taking it to his stable. You have heard the evidence upon that question, gentlemen, you have heard the evidence of all the parties that had anything to do with it; you have seen the appearance of those witnesses upon the stand, and it rests with you to solve the controversy that arises upon that question, because, in accordance with its solution depends your verdict in this case, unless, as I have said, upon the other question you shall find that there was no question of negligence by reason of due care having been exercised.

“The jury are the sole and exclusive judges of the credibility of witnesses. That is something with which the Court has nothing to do. It regulates the testimony that shall be permitted to be elicited from witnesses, but when the testimony is given, the extent to which it shall be believed by the jury is one for them solely. You observe the demeanor of the witness upon the stand, his manner of testifying, the nature of the testimony, whether in view of all the other evidence in the case it strikes you as reasonable as men of intelligence, whether it accords with what ordinary experience would teach you was likely to

have been the case; in other words, whether it is inherently probably or inherently improbable; how far the witness is contradicted by other witnesses; whether he has made inconsistent statements at other times; whether he adheres to a consistent story in his own recital upon the witness-stand, or contradicts himself in some part of his evidence as against what he has stated in others. All these things are considered by the jury in making up their minds as to the degree of credibility which they will accord to the witnesses, and when I say "the witnesses," I mean every witness who has come upon the stand.

"The law raises the presumption and surrounds the witness [109—73] with the presumption that he tells the truth under oath; that presumption, however, does not control the jury and require them to find that all witnesses have told the truth if in applying the tests I have suggested to you you are satisfied that they did not tell the truth. If a witness has testified to a fact or facts which you believe arose merely from a mistake, and not with any intention to deceive, then, of course while it might make you more careful in examining his evidence in other respects, you need not discard it; but if the witness has, in your judgment, deliberately told a falsehood in one fact material to the case, then you are not called upon to believe him at all, and you may discard his evidence in your consideration, unless, of course, you are entirely satisfied from other evidence in the case that in some respects he has told the truth.

"In a case of this kind, gentlemen of the jury,



perhaps it is unnecessary for me to suggest to you that you are to decide this case upon the evidence alone; you are not to permit your minds to be dragged aside by any consideration of sympathy on the one hand or prejudice on the other. The fact that this young woman has been badly injured, and calls for the sympathy of every right-minded man, still it should not sway you toward finding a verdict in her favor unless the legal basis for it is found by you to exist in the evidence, that is, by reason of the defendant's negligence she has suffered this injury; on the other hand, no bias or prejudice against an action of this kind should deter you from doing justice to her if she has suffered this injury through the negligence of the defendant. It has developed, throughout my experience upon the bench, that by reason of the more or less frequency of actions for personal injuries, as these are termed, a prejudice arises in the minds of some men against that class of [110—74] actions. That is not unnatural, because it is undoubtedly the case that a great many are lacking in merit; but no prejudice of that kind should be permitted to weigh with any man upon the jury as against the facts as he may find them disclosed in a particular case before him, where he is satisfied that those facts entitle the plaintiff to recover.

“In the federal courts—unlike the state system—the jury must be unanimous in their verdict; you cannot find a verdict by a less number than by the entire twelve, as you may in the state court.

“I think that that is all I have to suggest to you,

gentlemen, except with reference to your verdict. As I have indicated to you, gentlemen of the jury, should you find a verdict for the plaintiff, then it will be necessary for you to fix the amount. You determine in your minds what general damages she shall be entitled to by reason of her injuries and then add to that anything you find she has shown in the way of special damages, and when I refer to special damages, I think I suggested in the charge that they referred in this case to doctors' bills, hospital bills, and things of that kind. You find what the fact is as to whether she has incurred such obligations, and you add those in with the amount of general damages; you do not put in a separate statement of them, but you just put in the entire amount in a blank which you will find in a form of verdict which is the proper one if you find in favor of the plaintiff. If you find against the plaintiff upon any of the grounds that I have suggested to you, then there is a form here which simply is a finding in favor of the defendant."

**[Exceptions to Instructions Refused and Given.]**

Mr. MILLER.—I desire, in the first place, to except to the refusal of the Court to give the first instruction requested by the [111—75] defendant, that is, as to an instructed verdict, which instruction is as follows, to wit:

"The jury is hereby instructed to render a verdict in favor of the defendant and against the plaintiff."

Ex. 2. Which is hereby designated as Exception No. 2.

Mr. MILLER.—I desire also to take an exception to the instruction of the Court wherein it referred to the fastening or hitching of a horse. I will state that the reason for that is that I am in some doubt as to whether or not the way in which your Honor expressed it will include within it the fastening back of the lines and the setting of the brakes.

Ex. 3. Which is hereby designated as Exception No. 3. The instruction so given by the Court to which said exception is taken is as follows:

“If you believe from the evidence, therefore, that the defendant had control of the team of horses, and that while in such control left the team unfastened and unattended upon its premises, and with the gate or door leading to the street open, and that because of being so left unsecured or unattended the team escaped from the premises and ran away upon the street and as a result the plaintiff was injured, then that is a *prima facie* case of negligence upon the part of the defendant.”

Mr. MILLER.—I also desire to except to the refusal of the Court to give the instruction requested by the defendant with relation to the ordinance in Oakland.

Which instruction was in the words and figures as follows, to wit:

“You are hereby instructed that, at the time of the accident in this action referred to, there was in existence in the City of Oakland an ordinance entitled ‘Ordinance No. 607, [112—76] N. S., regulating traffic and care of vehicles and horses on and over the public highways in the City of Oak-



land, California,' and that in and by Section No. 24 thereof it is provided as follows: 'No horse shall be left unattended in any highway in the City of Oakland unless securely hitched by a rope, strap or chain attached to its neck or bridle and to a post or other suitable fastening at the curb, or by a rope, strap or chain attached to its bridle and to a suitable weight of not less than twenty pounds, or, in case of one or two horses being hitched to a wagon fitted with a suitable brake, the horses may be backed, the brake set, and the lines or reins so fastened that the wagon cannot be drawn forward by the horse or horses except by means of the lines or reins,' and, if you believe from all the evidence in the case that, at the time the horses in this action referred to ran away they were fastened as in and by said ordinance required, then and in such event the defendant cannot be considered as guilty of negligence in the matter of fastening said horses.

#### **Exception No. 4.**

Ex. 4. Which is hereby designated as Exception No. 4. Subsequently the jury returned into court and rendered a verdict in favor of the plaintiff and against the defendant, and assessed the damages in the sum of \$8000.00; and upon this verdict the judgment in this cause in favor of the plaintiff and against the defendant was entered.

Dated this 12th day of June, 1915.

H. B. M. MILLER and  
WM. RIX,

Attorneys for Defendant.

L. M. HOEFLEER,

Of Counsel. [113—77]

**[Stipulation as to Bill of Exceptions.]**

IT IS HEREBY STIPULATED that the foregoing is a full, true and correct Bill of Exceptions, and contains all the testimony and proceedings in said cause necessary to be used on the hearing of defendant's Writ of Error in the United States Circuit Court of Appeal.

Dated this 12th day of June, 1915.

HARRISON & HARRISON,  
B. F. STONE, JR.,  
STANLEY MOORE,

Attorneys for Plaintiff,

L. M. HOEFLEER,

Of Counsel.

H. B. M. MILLER,  
WM. RIX,

Attorneys for Defendants.

**[Order Approving, Settling and Allowing Bill of Exceptions.]**

The foregoing Bill of Exceptions, having been duly presented for settlement within the time required by law, the stipulations of the parties, and the orders of this Court, and, having been found to be full, true and correct, is HEREBY APPROVED, SETTLED AND ALLOWED.

Dated this 14th day of June, 1915.

WM. C. VAN FLEET,  
Judge of said Court.

Receipt of a copy of within Defendant's engrossed Bill of Exceptions is hereby admitted, this —— day of June, 1915.

HARRISON & HARRISON,  
Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [114—  
78]

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*In the District Court of the United States for the  
the Northern District of California, Second  
Division.*

No. 15,793.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LTD., a  
Corporation,

Defendant.

**Petition for Writ of Error.**

The San Francisco Breweries, Ltd., a corporation, the defendant above named, feeling itself aggrieved by the verdict of the jury and the judgment entered thereupon on the 15th day of April, 1915, whereby it was adjudged that plaintiff have and recover from the defendant the sum of \$8,000.00, comes now by H. B. M. Miller and Wm. Rix, its attorneys, and petitions said Court for an order allowing it, said



defendant, to prosecute a Writ of Error to the United States Circuit Court of Appeals in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of a supersedeas bond which the defendant shall give and furnish upon said Writ of Error; and that, upon the giving of such bond, all further proceedings in this court be suspended, stayed and superseded until the determination of said Writ of Error by the United States Circuit Court of Appeals in and for said Ninth Circuit.

And your petitioner will ever pray, etc.

H. B. M. MILLER,  
WM. RIX,

Attorneys for the San Francisco Breweries, Ltd.

L. M. HOEFLER,  
Of Counsel.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [115—79]

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*In the District Court of the United States for the  
Northern District of California, Second Division.*

No. 15,793.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LTD., a  
Corporation,

Defendant.

### **Assignment of Errors.**

Comes now the defendant, The San Francisco Breweries, Ltd., a corporation, and files and specifies the following as the errors upon which it will urge its Writ of Errors in the above-entitled action, to wit:

#### **I.**

The Court erred in refusing to grant the defendant's motion for a nonsuit, as appears by Exception No. 1, set forth in the Bill of Exceptions filed herein.

#### **II.**

The Court erred in refusing to direct the jury to bring in a verdict for the defendant in accordance with the instruction requested by said defendant, which is as follows, to wit:

The jury is hereby instructed to render a verdict in favor of the defendant and against the plaintiff.

As appears by Exception No. 2 in the Bill of Exceptions filed herein.

#### **III.**

The Court erred in giving to the jury the following instruction, to wit:

If you believe from the evidence, therefore, that the defendant had control of the team of horses, and that while in such control left the team unfastened and unattended upon its premises, and with the gate or door leading to the street open, and that because of being so left unsecured or unattended the team [116] escaped from the prem-

ises and ran away upon the street and as a result the plaintiff was injured, then that is a prima facie case of negligence upon the part of the defendant.

As appears by Exception No. 3 in the Bill of Exceptions filed herein.

#### IV.

The Court erred in refusing to give to the jury the instruction requested by the defendant as follows, to wit:

You are hereby instructed that, at the time of the accident in this action referred to, there was in existence in the City of Oakland an ordinance entitled "Ordinance No. 607 N. S., regulating traffic and care of vehicles and horses on and over the public highways in the City of Oakland, California," and that in and by Section No. 24 thereof it is provided as follows: "No horse shall be left unattended in any highway in the City of Oakland unless securely hitched by a rope, strap or chain attached to its neck or bridle and to a post or other suitable fastening at the curb, or by a rope, strap or chain attached to its bridle and to a suitable weight of not less than twenty pounds, or, in case of one or two horses being hitched to a wagon fitted with a suitable brake, the horses may be backed, the brake set, and the lines or reins so fastened that the wagon cannot be drawn forward by the horse or horses except by means of the lines or reins," and, if you believe from all the evidence in the case that, at the time the horses in this action referred to ran away they were fastened as in and by said ordi-



nance required, then and in such event the defendant cannot be considered as guilty of negligence in the matter of fastening said horses.

As appears by Exception No. 4 in the Bill of Exceptions filed herein.

V.

The Court erred in entering judgment herein in favor of [117] the plaintiff and against the defendant.

And defendant prays that the judgment of said United States District Court for the Northern District of California Second Division, entered herein in favor of the plaintiff and against the defendant be reversed by reason of, and because of, the errors herein set forth in this Assignment of Errors.

H. B. M. MILLER and  
WM. RIX,

Attorneys for San Francisco Breweries, Ltd.  
L. M. HOEFLEER,  
Of Counsel.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [118]

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*In the District Court of the United States for the  
Northern District of California, Second Division.*

No. 15,793.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LTD., a  
Corporation,

Defendant.

**Order Allowing Writ of Error, etc.**

Upon motion of H. B. M. Miller and Wm. Rix, attorneys for the defendant in the above-entitled action, and upon the filing of the Petition for Writ of Error and Assignment of Errors,

IT IS ORDERED that a Writ of Error, as prayed for in said Petition, be allowed, and that the amount of the supersedeas bond to be given by defendant upon said Writ of Error be, and the same is hereby, fixed at the sum of \$10,000.00 and that, upon the giving of said bond, all further proceedings in this Court be suspended, stayed and superseded pending the determination of said Writ of Error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated this 14th day of June, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [119]

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**[Bond on Writ of Error.]**

KNOW ALL MEN BY THESE PRESENTS, That, we The San Francisco Breweries, Limited, a corporation, as principal, and NATIONAL SURETY COMPANY, as surety, are held and firmly bound unto Sylvia A. Brainard, the plaintiff in the action hereinafter referred to in the full and just sum of Ten Thousand (10,000) Dollars, to be paid to the said plaintiff, her heirs, executors, ad-

ministrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 18th day of June, in the year of our Lord One Thousand Nine Hundred and Fifteen.

WHEREAS, lately at a District Court of the United States for the Northern District of California in a suit depending in said court, between Sylvia A. Brainard, as plaintiff, and The San Francisco Breweries, Limited, a corporation, as defendant a Judgment was rendered against the said defendant, corporation and the said defendant, corporation having obtained from said court a Writ of Error to reverse the Judgment in the aforesaid suit, and a citation directed to the said Sylvia A. Brainard citing and admonishing her to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said The San Francisco Breweries Limited, a corporation, shall prosecute to effect, and answer all damages and costs if it fail to make its plea good, then the above



obligation to be void; [120] else to remain in full force and virtue.

THE SAN FRANCISCO BREWERIES, LTD.,

By THOS. ALTON. [Seal]

[Seal National Surety Co.]

NATIONAL SURETY COMPANY.

FRANK L. GILBERT, [Seal]

Res. Vice-president.

E. MAHONEY, [Seal]

Res. Asst. Secretary.

Acknowledged before me the day and year first above written.

I. MacBRIDE.

Form of bond and sufficiency of sureties approved June 18, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jun. 18, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [121]

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**[Certificate of Clerk U. S. District Court to Transcript of Record.]**

*In the District Court of the United States, in and for the Northern District of California, Second Division.*

No. 15,793.

SYLVIA A. BRAINARD,

Plaintiff,

vs.

THE SAN FRANCISCO BREWERIES, LIMITED,  
a Corporation,

Defendant.



in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between The San Francisco Breweries, Limited, a Corporation, Plaintiff in Error, and Sylvia A. Brainard, Defendant in Error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD D. WHITE,  
Chief Justice of the United States, the 18th day of



June, in the year of our Lord One Thousand Nine Hundred and Fifteen.

[Seal]                      WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.

By J. A. Schaertzer,  
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,

Judge U. S. Dist. Ct. Nor. Dist. Cal.

Receipt of copy of within writ of error admitted  
this 18th day of June, 1915.

BYRON F. STONE,

Per A. G. ANDERSON, Jr.,

Attys. for Deft. in Error.

The answer of the Judges of the District Court  
of the United States, in and for the Northern Dis-  
trict of California.

The record and all proceedings of the plaint  
whereof mention is within made, with all things  
touching the same, we certify under the seal of our  
said Court, to the United States Circuit Court of  
Appeals for the Ninth Circuit, within mentioned at  
the day and place within contained, in a certain  
schedule to this writ annexed as within we are  
commanded.

By the Court.

[Seal]                      WALTER B. MALING,  
Clerk.

[Endorsed]:    Original.    No. 15,793.    United  
States District Court, for the Northern District of

California. The San Francisco Breweries, Ltd., Plaintiff in Error, vs. Sylvia A. Brainard, Defendant in Error. Writ of Error. Filed Jun. 18, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [123]

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**[Citation on Writ of Error (Original).]**

UNITED STATES OF AMERICA,—ss.

The President of the United States, To Sylvia A. Brainard, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein The San Francisco Breweries, Limited, a Corporation, is plaintiff in error, and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. C. VAN FLEET, United States District Judge for the Northern District of California, this 18th day of June, A. D., 1915.

WM. C. VAN FLEET,  
United States District Judge.

Receipt of copy of within citation on writ of error, is hereby admitted this 18th day of June, 1915.

BYRON F. STONE, Jr.,  
Per A. G. ANDERSON,  
Attys. for Deft. in Error.

[Endorsed]: Original. No. 15,793. United States District Court for the Northern District of California, The San Francisco Breweries, Limited, a Cor., Plaintiff in Error, vs. Sylvia A. Brainard, Defendant in Error. Citation on Writ of Error. Filed Jun. 18, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [124]

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[Endorsed]: No. 2620. United States Circuit Court of Appeals for the Ninth Circuit. The San Francisco Breweries, Limited, a Corporation, Plaintiff in Error, vs. Sylvia A. Brainard, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed July 7, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



